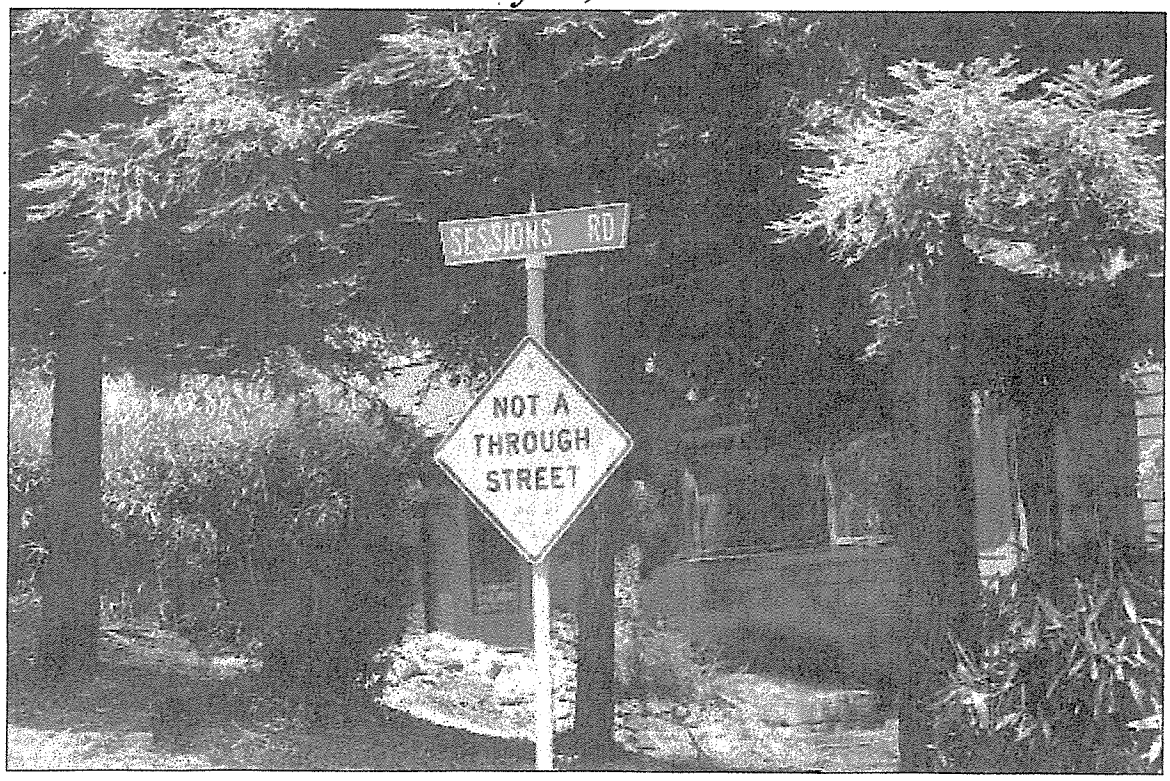
BAEFSKY & ASSOCIATES
ENVIRONMENTAL LANDSCAPE CONSULTING

ARBORIST REPORT
For Trees Located
On
Lot 66, Sierra Vista Way

Lafayette CA

July 6, 2007



Report Prepared for: Mr. Richard Holt
3929 Woodside Court
Lafayette, CA 94549

RECEIVED
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CITY OF LAFAYETTE
PLANNING DEPT.

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ATTACHMENT 6

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SUMMARY

This report adds to and corrects the previous report (Baefsky & Associates, May 29, 2007), which addressed seven select trees. Identification, measurement and evaluation of thirty-one trees are included in this report. Species identified include *Pinus canariensis* (Canary island pine), *P. pinea* (Italian stone pine), *Quercus agrifolia* (coast live oak), *Q. lobata* (valley oak), *Schinus molle* (CA peppertree) and *Sequoia sempervirens* (coast redwood). Tree condition ranged from very poor to good. The distance of potential negative impacts from tree trunks ranged from zero to ninety-five feet. Items shown on the site plan that are likely to affect trees include a storm drain, retaining wall, parking area, driveway and house. Probable negative results of these impacts are tree loss, reduced vigor, slower growing rates and increased failure potential. Recommendations are for the removal of twenty-one trees and the preservation of ten trees. Preservation measures include immediate root crown excavations, fencing or straw bale barriers, air-spade root excavation, root pruning, silt fence installation, supplemental irrigation and clearance pruning,

INTRODUCTION

BACKGROUND

The site is an undeveloped lot in the City of Lafayette, on which construction of a new residence is proposed. This lot begins at the intersection of Sessions Road and Sierra Vista Way, and continues uphill next to Sessions Road, where it abuts currently undeveloped property. There is a drainage swale in the middle of the property, and an existing dwelling located next to the property. Across the road, a steep slope is dotted with pine trees.

ASSIGNMENT

Mr. Richard Hold hired me to evaluate trees on and adjacent to the site, in accordance with requests by the City of Lafayette Planning Department.

LIMITS OF ASSIGNMENT

With one exception requested by my client, assessment of trees was limited to those greater than or equal to six inches in diameter. The negative impacts of proposed construction were evaluated based on the most recent site plan (E.G. Craig, 7/3/07) that was provided by the clients architect. Survivability is the basis for recommendations for preservation or removal, given proposed site work, and its likely impact on the trees.

PURPOSE AND USE OF REPORT

This report is for the exclusive use of the client and his contractors and the City of Lafayette, as part of an application for the development of this property. The purpose of this report is to provide accurate information about the trees in question, as required by the City of Lafayette.

OBSERVATIONS

METHODS

The following report is derived from four field inspections, including one site meeting in which the site and trees were discussed with client and site architect. Thirty-one trees were tagged, numbered, measured at 4.5 feet (above existing grade), and evaluated.

Evaluation of negative impacts of construction included measuring distances from each tree trunk to the closest proposed site work, and taking into account tree size, species, species tolerance of construction and individual tree condition.

The following items are included in this report:

- Analyses of individual tree condition
- Evaluations of potential construction impacts on trees
- Recommendations for tree removal & preservation

Dates of Field Meeting and Inspection: 4/26/07, 5/25/07, 7/1/07 and 7/3/07

Measurement of trunk circumferences was at 4.5 feet above ground, unless otherwise noted. Trunk diameter estimates are from the division of measured trunk circumferences by 3.14.

Overall tree condition included a zero (worst) to five (best) assessment of tree **vigor**, and separately tree **structure.** A zero to five rating system was also used for rating tree condition, with zero being dead, and five being excellent. Examination of the following characteristics were used to rate the trees.

Parameter	Items Evaluated
Soil/rooting zone	plant cover, bare soil, disturbed soil
Root crown region	damage, cavities, soil build-up
Trunk lean	wounds, cavities, twists
Scaffold branches	wounds, cavities, poor pruning, co-dominance, crotch angle, bark at crotches
Branches	distribution, deadwood, cavities
Twigs	growth, dieback
Leaves	growth, color, size

SITE DATA

- Six tree species were identified on site; *Pinus canariensis* (Canary island pine), *P. pinea* (Italian stone pine), *Schinus molle* (CA peppertree), *Sequoia sempervirens* (coast redwood), *Quercus agrifolia* (coast live oak) and *Q. lobata* (valley oak)
- Tree diameters ranged from 3.8 inches to 32.2, averaging 18.7 inches
- Tree condition ranged from very poor-poor to good, averaging poor-fair (see Appendix A – Tree Data)

- Analysis of negative impacts of proposed construction included consideration of the following list of species tolerance of construction:

Common Name	Tolerance of Construction
Canary island pine	Good
CA peppertree	Moderate
coast live oak	Good to moderate*
coast redwood	Excellent
Italian stone pine	Good
valley oak	Moderate*

- Due to proposed work near the trees, the following negative impacts to trees are anticipated (see Appendix B – Impacts of Construction):

IMPACT	NUMBER OF TREES	TOTAL PERCENT OF POPULATION EVALUATED
Reduced Vigor, Increased Failure Potential	2	6%
Reduced Vigor	3	10%
No Visible Impacts	8	26%
Loss	18	58%

DISCUSSION

Proposed construction will result in the loss of the majority of the trees evaluated on this property. Twenty six percent of the trees show no visible impacts from work described on the site plan. Sixteen percent of the trees will show some negative impacts, but are likely to survive work shown on the site plan.

Several of the trees that may survive construction are in poor to very poor condition. Their current value is low, and following new construction, they will not add a lot of benefit to the site.

CONCLUSIONS

- Remove trees that will not survive construction and several that are in poor to very poor condition
- Preserve as many trees as possible, that are in poor to good condition

* Matheny and Clark, 1998

RECOMMENDATIONS

Given existing site plans:

- Remove eighteen trees that are likely to fail due to site work
- Remove three trees (#7, #29, #30) that are in poor to very poor condition
- Preserve ten trees
- For trees to be preserved:
  - Excavation and inspection of root crown region and & modification of grading as needed to allow positive drainage away from trunks
  - Installation of protective fencing or straw bale barriers
  - Supplemental irrigation for species with high water use needs (Coast redwood), and/or as indicated by consulting arborist
  - Air spade trenching and selective professional root pruning where cuts or excavations occurring within rooting zone – *after site has been staked consulting arborist shall confirm or deny the need for this treatment*
  - Pruning for clearance – *carried out conservatively, as needed, prior to grading in order to preserve as much live foliage as is possible. Evaluation of site prior to grading will determine the need for clearance priming.*

TREE PRESERVATION PROGRAM (See Appendix C – Recommendations)

Prior to Grading

1. ROOT CROWN EXCAVATION & INSPECTION: A pneumatic air spade blasts soil and debris away from the trunk. Visual and/or drill evaluation of trunk decay and soundness is carried out, and prescriptions for correcting or preventing problems are developed based on the analysis.

2. TRUNK PROTECTIVE FENCING OR STRAW BALE BARRIERS: Install 6' high fencing outside of tree protection zone (TPZ) that is not readily movable, flexible or bendable. Supervision of all work within TPZ shall be by consulting Certified Arborist. Installation of straw bale barriers shall be up against the trunks of designated trees, to prevent vehicle impacts.

3. SUPPLEMENTAL IRRIGATION: High water use species such as coast redwood shall receive bi-monthly to monthly supplemental irrigation to increase tree vigor. Irrigation of other specimens shall be determined on site as needed.

4. AIR SPADE ROOT EXCAVATION & SELECTIVE PROFESSIONAL ROOT PRUNING: Cuts within tree driplines preceded by air spade excavation along edge of cut or fill to determine the need and access for professional root pruning.

5. CLEARANCE PRUNING: Trees with limbs overhanging proposed work areas should have branches tied back temporarily, or if the trees are mature, lower branches removed. Where pruning is necessary, the following guidelines shall be followed:

- Limbs three inches (and greater) in diameter to be removed shall be clearly indicated prior to removal.
-

6. SILT FENCING: Install silt fencing on the uphill side of protective fencelines as needed to prevent the build-up of soil around tree trunks

During Construction

1. ROOT REPAIR: Sharply cut torn roots within protected rooting zones and cover with wet burlap or soil to prevent drying out. Activity within dripline regions require the consulting certified arborists on hand to monitor equipment activity, repair damaged roots, and assists in mitigating rooting zone degradation.

2. SUPPLEMENTAL IRRIGATION: As directed by consulting arborist. Wash dust off coast redwood foliage daily.

MONITORING PROGRAM

Supervise (consulting arborist) the following *tree preservation activities*: Root Crown Excavation, Clearance Pruning, Fencing/Straw bale barrier Placement, Air Spade excavation & Root Cutting. Grubbing & Grading within tree driplines

AFTER CONSTRUCTION

1. ROOT CARE: Maintain moisture at an adequate level for root growth to proceed at a normal pace. Moisture levels should approximate the water cycle of the trees, which is dry summer and wet winters. If droughty conditions prevail, supplemental irrigation may be appropriate through late spring in early fall and winter.

Use plant material that has the same water needs, and compatible cultural needs as the trees preserved.

2. ROOT CROWN REGION: Keep clear of debris, soil and moisture. Divert runoff from uphill so that it does not encounter tree trunks or pool and stand near roots.

3. TRUNK: Do not install lights, tree houses or any other constructs, which wound the trunk.

4. CROWN OR CANOPY: Avoid pruning as long as possible after construction, except for dead and dying branches. Evaluate trees after two years for "corrective" structural pruning.

GLOSSARY OF TERMS

driplines – areas extending downward in an imaginary line from a tree's outermost branches to the ground

vigor – a tree's ability to grow and resist pests, diseases, weeds and other stresses

structure – a tree's non-living balance, which allows a tree to stand and grow with minimal failures

tree protection zones - Protect all area within designated tree protection zones from foot traffic, vehicle incursion and storage of construction related items.

REFERENCES

Tree Protection Ordinance 539. 2003. City of Lafayette Municipal Code: Chapter 6-17.

Trees and Development. 1998. Nelda Matheny and James R. Clark. International Society of Arboriculture. Champaign, IL.

APPENDIX A – TREE DATA

#	COMMON NAME	DIAMETER (inches)	ROOTING ZONE	ROOT CROWN	TRUNK	SCAFFOLDS	SMALLER BRANCHES	TWIGS	FOLIAGE	CONDITION
1	COAST REDWOOD	13.1	pervious within dripline	flare	good taper	ok	ok	normal	normal	GOOD
2	COAST REDWOOD	3.8	pervious within dripline	buried	leaning, no taper	ok	ok	normal	normal	FAIR
3	COAST REDWOOD	9.2	pervious within dripline	buried	minimal taper	stubbed lower	ok	normal	normal	POOR-FAIR
4	COAST REDWOOD	13.1	pervious within dripline	buried	minimal taper	ok	ok	normal	normal	FAIR
5	COAST LIVE OAK	8.9, 13.7	pervious	buried	leaning, recent wounds	top only	lower stripped out	normal	normal	FAIR
6	VALLEY OAK	26.1	steep slope	1/2 buried	twisted, wire embedded	Co-dominant upright	shaded dieback	shaded dieback	45% defoliated	POOR
	CA PEPPERTREE	20.7	limited, rubble, cut	buried, decayed	45-60% decay	Co-dominant top, galls, stubbed	stunted	normal	normal	VERY POOR-POOR
	COAST REDWOOD	8.8	restricted, pervious, no irrigation	buried	minimal taper	good distribution	ok	ok	ok	FAIR
	COAST REDWOOD	21.7, 12.7	limited, dry, debris piles	buried	co-dominant	good distribution	ok	ok	ok	POOR-FAIR
0	COAST REDWOOD	21.0	limited, dry, debris piles	buried	minimal taper	ok	ok	ok	ok	FAIR
	COAST REDWOOD	24.8	edge of steep slope	buried	good taper	50% distribution/ grove	shaded dieback	ok	ok	FAIR
	COAST REDWOOD	18.0	slope	buried	minimal taper	lower, interior dieback	shaded dieback	ok	ok	FAIR
	COAST REDWOOD	22.9. 11.8	slope	buried, sprouts	co-dominant	75% distribution, grove	ok	ok	ok	FAIR
	COAST REDWOOD	22.3	slope, pervious	partially clear, sprouts	good taper	shaded, interior dieback	ok	ok	ok	FAIR-GOOD
	COAST REDWOOD	18.8	slope, pervious	flare	minimal taper	lower, interior dieback	ok	ok	ok	FAIR
	COAST REDWOOD	25.5	steep slope, debris piles	buried	good taper	75% distribution, grove	lower shaded dieback	ok	older browning	FAIR-GOOD

ARBORIST REPORT

#	COMMON NAME	DIAMETER (inches)	ROOTING ZONE	ROOT CROWN	TRUNK	SCAFFOLDS	SMALLER BRANCHES	TWIGS	FOLIAGE	CONDITION
17	COAST REDWOOD	6.1, 13.7	steep slope	25% buried	co-dominant, minimal taper	top 66%	sparse	ok	ok	POOR
18	COAST REDWOOD	19.1, 10.8	steep slope, swale	sprouts	co-dominant, minimal taper	75% distribution, grove	ok	ok	older browning	POOR-FAIR
19	COAST REDWOOD	17.8	steep slope, swale	sprouts	minimal taper	25% distribution, grove	sprouts	ok	older browning	POOR
20	COAST REDWOOD	29.9	steep slope	25% buried	good taper, one indentation	75% distribution, grove	ok	ok	older browning	FAIR
21	Canary island pine	15.6	very steep	75% buried	minimal taper	top 33%	sparse	stunted	sparse	POOR
22	Canary island pine	18.2, 16.9	very steep	buried	co-dominant, included bark	66% distribution, grove	sparse	stunted	sparse	POOR
23	Canary island pine	23.9	swale	buried	topping wound, minimal taper	co-dominant, included bark	one large dead	sparse	sparse	POOR
24	Canary island pine	28.5	road, slope, swale	buried	topped at 30'	co-dominant where topped	ok	stunted	sparse	POOR
25	Canary island pine	25.3	slope, swale	75% buried	good taper	irregular distribution	dieback	stunted	sparse	POOR-FAIR
26	Canary island pine	16.9	slope	buried	leaning, minimal taper	irregular distribution	dieback	stunted	sparse	POOR
27	Coast live oak	10.2	slope	buried	lean	co-dominant	shaded dieback	ok	ok	FAIR
28	Coast live oak	10.8	slope, flat	buried	lean	co-dominant	shaded dieback	ok	ok	FAIR
29	Canary island pine	12.7	Steep slope	Buried	Topped	Small, weak	Shaded dieback	Stunted	Sparse	VERY POOR-POOR
30	Canary island pine	15.4	Very steep slope	Buried	Topped	Few	Shaded dieback	Stunted	Sparse	VERY POOR-POOR
31	Italian stone pine	32.17	Steep slope	Buried	Good taper	Ok distribution, two co-dominant	Shaded dieback	Good	Good	FAIR

APPENDIX B – IMPACTS OF CONSTRUCTION

#	COMMON NAME	DIAMETER (inches)	CONDITION	CLOSEST ITEM	DISTANCE FROM TRUNK (feet)	IMPACT
1	COAST REDWOOD	13.1	GOOD	STORM DRAIN	11	REDUCED VIGOR
2	COAST REDWOOD	3.8	FAIR	STORM DRAIN	16	REDUCED VIGOR
3	COAST REDWOOD	9.2	POOR-FAIR	STORM DRAIN	24	NO VISIBLE IMPACT
4	COAST REDWOOD	13.1	FAIR	STORM DRAIN	28	NO VISIBLE IMPACT
5	COAST LIVE OAK	22.3	FAIR	HOUSE	21	NO VISIBLE IMPACT
6	VALLEY OAK	26.1	POOR	RETAINING WALL	11	REDUCED VIGOR, INCREASED FAILURE POTENTIAL
7	CA PEPPERTREE	20.7	VERY POOR-POOR	HOUSE	11	LOSS
8	COAST REDWOOD	8.8	FAIR	STORM DRAIN	5	REDUCED VIGOR
9	COAST REDWOOD	21.7, 12.7	POOR-FAIR	HOUSE	0	LOSS
10	COAST REDWOOD	21.0	FAIR	HOUSE	0	LOSS
11	COAST REDWOOD	24.8	FAIR	HOUSE	0	LOSS
12	COAST REDWOOD	18.0	FAIR	HOUSE	0	LOSS
13	COAST REDWOOD	22.9. 11.8	FAIR	HOUSE	0	LOSS
14	COAST REDWOOD	22.3	FAIR-GOOD	HOUSE	0	LOSS
15	COAST REDWOOD	18.8	FAIR	HOUSE	0	LOSS
16	COAST REDWOOD	25.5	FAIR-GOOD	HOUSE	2	LOSS
17	COAST REDWOOD	6.1, 13.7	POOR	HOUSE	0	LOSS
18	COAST REDWOOD	19.1, 10.8	POOR-FAIR	HOUSE	0	LOSS

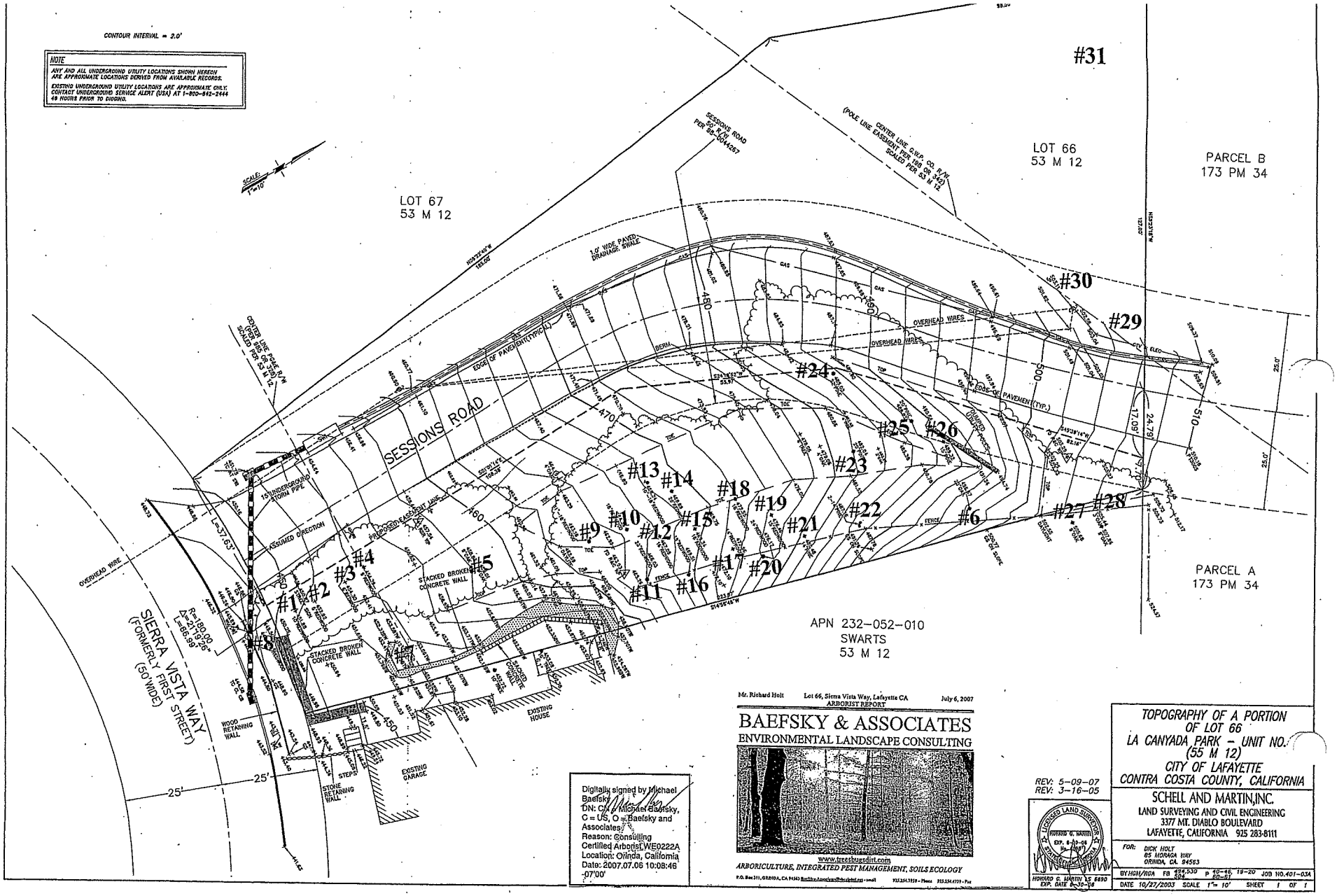
#	COMMON NAME	DIAMETER (inches)	CONDITION	CLOSEST ITEM	DISTANCE FROM TRUNK (feet)	IMPACT
19	COAST REDWOOD	17.8	POOR	HOUSE	0	LOSS
20	COAST REDWOOD	29.9	FAIR	HOUSE	2	LOSS
21	Canary island pine	15.6	POOR	HOUSE	0	LOSS
22	Canary island pine	18.2, 16.9	POOR	HOUSE	1	LOSS
23	Canary island pine	23.9	POOR	PARKING	1	LOSS
24	Canary island pine	28.5	POOR	DRIVEWAY	5	REDUCED VIGOR, INCREASED FAILURE POTENTIAL
25	Canary island pine	25.3	POOR-FAIR	DRIVEWAY	0	LOSS
26	Canary island pine	16.9	POOR	DRIVEWAY	1	LOSS
27	Coast live oak	10.2	FAIR	GRADING	12	NO VISIBLE IMPACT
28	Coast live oak	10.8	FAIR	GRADING	20	NO VISIBLE IMPACT
29	Canary island pine	12.7	VERY POOR-POOR	DRIVEWAY	70	NO VISIBLE IMPACT
30	Canary island pine	15.4	VERY POOR-POOR	DRIVEWAY	55	NO VISIBLE IMPACT
31	Italian stone pine	32.2	FAIR	DRIVEWAY	95	NO VISIBLE IMPACT

APPENDIX C – RECOMMENDATIONS

#	COMMON NAME	CONDITION	DIAMETER (inches)	PRESERVE OR REMOVE	TREE PROTECTION ZONE (feet from trunk)	FENCING	IRRIGATION
1	COAST REDWOOD	GOOD	13.1	PRESERVE	11	Chain-link or stake-wire-orange plastic	Monthly
2	COAST REDWOOD	FAIR	3.8	PRESERVE	16	Same as above	Same as above
3	COAST REDWOOD	POOR	9.2	PRESERVE	24	Same as above	Same as above
4	COAST REDWOOD	FAIR	13.1	PRESERVE	28	Same as above	Same as above
5	COAST LIVE OAK	FAIR	22.3	PRESERVE	21	Same as above	Same as above
6	VALLEY OAK	POOR	26.1	PRESERVE	11	Same as above	Every two months
7	CA PEPPERTREE	VERY POOR – POOR	20.7	REMOVE			
8	COAST REDWOOD	FAIR	8.8	PRESERVE	5	STRAW BALE BARRIER	Monthly
9	COAST REDWOOD	POOR-FAIR	21.7, 12.7	REMOVE			
10	COAST REDWOOD	FAIR	21.0	REMOVE			
11	COAST REDWOOD	FAIR	24.8	REMOVE			
12	COAST REDWOOD	FAIR	18.0	REMOVE			
13	COAST REDWOOD	FAIR	22.9. 11.8	REMOVE			
14	COAST REDWOOD	FAIR-GOOD	22.3	REMOVE			
15	COAST REDWOOD	FAIR	18.8	REMOVE			
16	COAST REDWOOD	FAIR-GOOD	25.5	REMOVE			
17	COAST REDWOOD	POOR	6.1, 13.7	REMOVE			
18	COAST REDWOOD	POOR-FAIR	19.1, 10.8	REMOVE			
19	COAST REDWOOD	POOR	17.8	REMOVE			
20	COAST REDWOOD	FAIR	29.9	REMOVE			

ARBORIST REPORT

#	COMMON NAME	CONDITION	DIAMETER (inches)	PRESERVE OR REMOVE	TREE PROTECTION ZONE (feet from trunk)	FENCING	IRRIGATION
21	Canary island pine	POOR	15.6	REMOVE			
22	Canary island pine	POOR	18.2, 16.9	REMOVE			
23	Canary island pine	POOR	23.9	REMOVE			
24	Canary island pine	POOR	28.5	PRESERVE	5	STRAW BALE BARRIER	Once per two months
25	Canary island pine	POOR-FAIR	25.3	REMOVE			
26	Canary island pine	POOR	16.9	REMOVE			
27	Coast live oak	FAIR	10.2	PRESERVE	12	Chain-link or stake-wire-orange plastic	
28	Coast live oak	FAIR	10.8	PRESERVE	15	Chain-link or stake-wire-orange plastic	
29	Canary island pine	VERY POOR-POOR	12.7	REMOVE			
30	Canary island pine	VERY POOR-POOR	15.4	REMOVE			
31	Italian stone pine	FAIR	32.2	PRESERVE	95	Chain-link or stake-wire-orange plastic	



Mr. Richard Holt Lot 66, Siena Vista Way, Lafayette CA July 6, 2007
ARBORIST REPORT

BAEFSKY & ASSOCIATES
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Digitally signed by Michael Baefsky
DN: CN = Michael Baefsky, C = US, O = Baefsky and Associates
Reason: Consulting Certified Arborist WE0222A
Location: Orinda, California
Date: 2007.07.06 10:08:46 -07'00'

REV: 5-09-07
REV: 3-16-05

LICENSED LAND SURVEYOR
HOWARD G. MARTIN
EXP. 6-30-08
STATE OF CALIFORNIA
HOWARD G. MARTIN LS 6490
EXP. DATE 6-30-08

TOPOGRAPHY OF A PORTION OF LOT 66
LA CANYADA PARK - UNIT NO. 2
(55 M 12)
CITY OF LAFAYETTE
CONTRA COSTA COUNTY, CALIFORNIA

SCHELL AND MARTIN, INC.
LAND SURVEYING AND CIVIL ENGINEERING
3377 MT. DIABLO BOULEVARD
LAFAYETTE, CALIFORNIA 925 283-8111

FOR: DICK HOLT
85 MORAGA WAY
ORINDA, CA. 94563

BY: HGM/RCA FB 584,530 P 10-46, 19-20 JOB NO. 401-034
582 60-61
DATE 10/27/2003 SCALE 1"= 10' SHEET 1 OF 1

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BAEFSKY & ASSOCIATES
ENVIRONMENTAL LANDSCAPE CONSULTING

April 1, 2008

Mr. Dick Holt
C/o Caldwell Banker
85 Moraga Way
Orinda, CA 94563

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CITY OF LAFAYETTE
PLANNING DEPT.

Job Site: Lot 66 Sierra Vista Way, Lafayette CA

Subject: Updated Arborist Report

Dear Mr. Holt,

The following memo is an update to the Baefsky & Associates Arborist Report, dated July 6, 2007. This update includes revisions to Appendix B (Construction Impacts) and Appendix C (Recommendations) of the report, as well as changes to details contained in the report related to impacts on specific trees from proposed construction, as well as recommendations to remove or preserve, and preservation details.

I am providing this memo due to a City of Lafayette request for an updated Arborist Report, based on the current house plan and driveway. In preparing this memo, analysis of probable construction impacts to trees relied on the Schell and Martin, Inc. Preliminary Site Map, revised March 28, 2008.

Revised Summary of Impacts to Trees

IMPACT	NUMBER OF TREES	TOTAL PERCENT OF POPULATION EVALUATED
Reduced Vigor, Increased Failure Potential	3	10%
Reduced Vigor	1	3%
No Visible Impacts	5	16%
Loss	22	71%

Revised Recommendations

- Remove twenty trees that are likely to fail due to site work, and two trees due to their existing (very poor) condition ratings
- Preserve nine trees

APPENDIX B – CONSTRUCTION IMPACTS

#	COMMON NAME	DIAMETER (inches)	CONDITION	CLOSEST ITEM	DISTANCE FROM TRUNK (feet)	IMPACT
1	COAST REDWOOD	13.1	GOOD	DRIVEWAY	0	LOSS
2	COAST REDWOOD	3.8	FAIR	DRIVEWAY	0	LOSS
3	COAST REDWOOD	9.2	POOR-FAIR	DRIVEWAY	5.5	REDUCED VIGOR, INCREASED FAILURE POTENTIAL
4	COAST REDWOOD	13.1	FAIR	DRIVEWAY	0	LOSS
5	COAST LIVE OAK	22.3	FAIR	RETAINING WALL	2.5	REDUCED VIGOR, INCREASED FAILURE POTENTIAL
6	VALLEY OAK	26.1	POOR	STORM DRAIN INLET	12	REDUCED VIGOR, INCREASED FAILURE POTENTIAL
7	CA PEPPERTREE	20.7	VERY POOR-POOR	DRIVEWAY	0	LOSS
8	COAST REDWOOD	8.8	FAIR	STORM DRAIN	5	REDUCED VIGOR
9	COAST REDWOOD	21.7, 12.7	POOR-FAIR	HOUSE	0	LOSS
10	COAST REDWOOD	21.0	FAIR	HOUSE	0	LOSS
11	COAST REDWOOD	24.8	FAIR	HOUSE	0	LOSS
12	COAST REDWOOD	18.0	FAIR	HOUSE	0	LOSS
13	COAST REDWOOD	22.9. 11.8	FAIR	HOUSE	0	LOSS
14	COAST REDWOOD	22.3	FAIR-GOOD	HOUSE	0	LOSS
15	COAST REDWOOD	18.8	FAIR	HOUSE	0	LOSS
16	COAST REDWOOD	25.5	FAIR-GOOD	HOUSE	2	LOSS

#	COMMON NAME	DIAMETER (inches)	CONDITION	CLOSEST ITEM	DISTANCE FROM TRUNK (feet)	IMPACT
17	COAST REDWOOD	6.1, 13.7	POOR	HOUSE	0	LOSS
18	COAST REDWOOD	19.1, 10.8	POOR-FAIR	HOUSE	0	LOSS
19	COAST REDWOOD	17.8	POOR	HOUSE	0	LOSS
20	COAST REDWOOD	29.9	FAIR	HOUSE	2	LOSS
21	Canary island pine	15.6	POOR	HOUSE	0	LOSS
22	Canary island pine	18.2, 16.9	POOR	HOUSE	1	LOSS
23	Canary island pine	23.9	POOR	PARKING	1	LOSS
24	Canary island pine	28.5	POOR	DRIVEWAY	0	LOSS
25	Canary island pine	25.3	POOR-FAIR	DRIVEWAY	0	LOSS
26	Canary island pine	16.9	POOR	DRIVEWAY	1	LOSS
27	Coast live oak	10.2	FAIR	GRADING	12	NO VISIBLE IMPACT
28	Coast live oak	10.8	FAIR	GRADING	20	NO VISIBLE IMPACT
29	Canary island pine	12.7	VERY POOR-POOR	DRIVEWAY	20	REDUCED VIGOR, INCREASED FAILURE POTENTIAL
30	Canary island pine	15.4	VERY POOR-POOR	DRIVEWAY	20	REDUCED VIGOR, INCREASED FAILURE POTENTIAL
31	Italian stone pine	32.2	FAIR	DRIVEWAY	95	NO VISIBLE IMPACT

APPENDIX C: RECOMMENDATIONS

#	COMMON NAME	CONDITION	DIAMETER (inches)	PRESERVE OR REMOVE	TREE PROTECTION ZONE (feet from trunk)	FENCING	IRRIGATION
1	COAST REDWOOD	GOOD	13.1	REMOVE			
2	COAST REDWOOD	FAIR	3.8	REMOVE			
3	COAST REDWOOD	POOR	9.2	PRESERVE	5	Straw bale barrier	Monthly
4	COAST REDWOOD	FAIR	13.1	PRESERVE	28	Chain-link or stake-wire-orange plastic	Same as above
5	COAST LIVE OAK	FAIR	22.3	PRESERVE	5 to 20	Fence as above, with straw bale barrier at retaining wall	
6	VALLEY OAK	POOR	26.1	PRESERVE	11	Same as above	Every two months
7	CA PEPPERTREE	VERY POOR – POOR	20.7	REMOVE			
8	COAST REDWOOD	FAIR	8.8	PRESERVE	5	STRAW BALE BARRIER	Monthly
9	COAST REDWOOD	POOR-FAIR	21.7, 12.7	REMOVE			
10	COAST REDWOOD	FAIR	21	REMOVE			
11	COAST REDWOOD	FAIR	24.8	REMOVE			
12	COAST REDWOOD	FAIR	18	REMOVE			
13	COAST REDWOOD	FAIR	22.9. 11.8	REMOVE			
14	COAST REDWOOD	FAIR-GOOD	22.3	REMOVE			
15	COAST REDWOOD	FAIR	18.8	REMOVE			
16	COAST REDWOOD	FAIR-GOOD	25.5	REMOVE			
17	COAST REDWOOD	POOR	6.1, 13.7	REMOVE			
18	COAST REDWOOD	POOR-FAIR	19.1, 10.8	REMOVE			

#	COMMON NAME	CONDITION	DIAMETER (inches)	PRESERVE OR REMOVE	TREE PROTECTION ZONE (feet from trunk)	FENCING	IRRIGATION
19	COAST REDWOOD	POOR	17.8	REMOVE			
20	COAST REDWOOD	FAIR	29.9	REMOVE			
21	Canary island pine	POOR	15.6	REMOVE			
22	Canary island pine	POOR	18.2, 16.9	REMOVE			
23	Canary island pine	POOR	23.9	REMOVE			
24	Canary island pine	POOR	28.5	REMOVE			
25	Canary island pine	POOR-FAIR	25.3	REMOVE			
26	Canary island pine	POOR	16.9	REMOVE			
27	Coast live oak	FAIR	10.2	PRESERVE	12	Chain-link or stake-wire-orange plastic	
28	Coast live oak	FAIR	10.8	PRESERVE	15	Chain-link or stake-wire-orange plastic	
29	Canary island pine	VERY POOR-POOR	12.7	REMOVE			
30	Canary island pine	VERY POOR-POOR	15.4	REMOVE			
31	Italian stone pine	FAIR	32.2	PRESERVE	95	Chain-link or stake-wire-orange plastic	

CERTIFICATION OF PERFORMANCE

I, Michael Baefsky certify:

- That I have personally inspected the trees and the property referred to in this report, and have stated my findings accurately. The extent of the evaluation is stated in the attached report;
- That I have no current or prospective interest in the vegetation or the property that is the subject of this report and have no personal interest or bias with respect to the parties involved;
- That the analysis, opinions, and conclusions stated herein are my own;
- That my analysis, opinions, and conclusions were developed and this report has been prepared according to commonly accepted arboricultural practices;
- That no one provided significant professional assistance to the consultant, except as indicated within the report;
- That my compensation is not contingent upon the reporting of a predetermined conclusion that favors the cause of the client or any other party.

I further certify that I am Registered Consulting Arborist #456, a member of the American Society of Consulting Arborists, and acknowledge, accept, and adhere to the ASCA Standards of Professional Practice. I am International Society of Arboriculture Certified Arborist #WE0222A, and have been involved in the practice of arboriculture and the study of trees for over twenty years.

Signed: _____ *Date:* 4/1/08

Mr. Richard Holt — Lot 66 Sierra Vista Way, Lafayette CA — April 1, 2008
Updated Arborist Report

APPENDIX B – CONSTRUCTION IMPACTS

#	COMMON NAME	DIAMETER (inches)	CONDITION	CLOSEST ITEM	DISTANCE FROM TRUNK (feet)	IMPACT
1	COAST REDWOOD	13.1	GOOD	DRIVEWAY	0	LOSS
2	COAST REDWOOD	3.8	FAIR	DRIVEWAY	0	LOSS
3	COAST REDWOOD	9.2	POOR-FAIR	DRIVEWAY	3.5	REDUCED VIGOR, INCREASED FAILURE POTENTIAL, LOSS
4	COAST REDWOOD	13.1	FAIR	DRIVEWAY	0	LOSS
5	COAST LIVE OAK	22.3	FAIR	RETAINING WALL	2.5	REDUCED VIGOR, INCREASED FAILURE POTENTIAL, LOSS
6	VALLEY OAK	26.1	POOR	STORM DRAIN INLET.	12	REDUCED VIGOR, INCREASED FAILURE POTENTIAL
7	CA PEPPERTREE	20.7	VERY POOR-POOR	DRIVEWAY	0	LOSS
8	COAST REDWOOD	6.8	FAIR	STORM DRAIN	5	REDUCED VIGOR
9	COAST REDWOOD	21.3, 12.7	POOR-FAIR	HOUSE	0	LOSS
10	COAST REDWOOD	21.8	FAIR	HOUSE	0	LOSS
11	COAST REDWOOD	24.8	FAIR	HOUSE	0	LOSS
12	COAST REDWOOD	18.0	FAIR	HOUSE	0	LOSS
13	COAST REDWOOD	22.9, 11.8	FAIR	HOUSE	0	LOSS
14	COAST REDWOOD	22.3	FAIR-GOOD	HOUSE	0	LOSS
15	COAST REDWOOD	18.6	FAIR	HOUSE	0	LOSS
16	COAST REDWOOD	23.3	FAIR-GOOD	HOUSE	2	LOSS

Mr. Richard Holt — Lot 66 Sierra Vista Way, Lafayette CA — April 1, 2008
Updated Arborist Report

#	COMMON NAME	DIAMETER (inches)	CONDITION	CLOSEST ITEM	DISTANCE FROM TRUNK (feet)	IMPACT
17	COAST REDWOOD	6.1, 12.7	POOR	HOUSE	0	LOSS
18	COAST REDWOOD	19.1, 10.8	POOR-FAIR	HOUSE	0	LOSS
19	COAST REDWOOD	17.8	POOR	HOUSE	0	LOSS
20	COAST REDWOOD	29.9	FAIR	HOUSE	2	LOSS
21	Canary Island pine	13.6	POOR	HOUSE	0	LOSS
22	Canary Island pine	18.2, 16.9	POOR	HOUSE	1	LOSS
23	Canary Island pine	23.9	POOR	PARKING	1	LOSS
24	Canary Island pine	22.5	POOR	DRIVEWAY	0	LOSS
25	Canary Island pine	21.3	POOR-FAIR	DRIVEWAY	0	LOSS
26	Canary Island pine	16.9	POOR	DRIVEWAY	1	LOSS
27	Coast live oak	10.2	FAIR	GRADING	12	NO VISIBLE IMPACT
28	Coast live oak	10.8	FAIR	GRADING	29	NO VISIBLE IMPACT
29	Canary Island pine	12.3	VERY POOR-POOR	DRIVEWAY	29	REDUCED VIGOR, INCREASED FAILURE POTENTIAL
30	Canary Island pine	15.4	VERY POOR-POOR	DRIVEWAY	28	REDUCED VIGOR, INCREASED FAILURE POTENTIAL
31	Italian stone pine	33.2	FAIR	DRIVEWAY	35	NO VISIBLE IMPACT

BARRETT & ASSOCIATES — ENVIRONMENTAL LANDSCAPE CONSULTING

Mr. Richard Holt — Lot 66 Sierra Vista Way, Lafayette CA — April 1, 2008
Updated Arborist Report

APPENDIX C: RECOMMENDATIONS

#	COMMON NAME	CONDITION	DIAMETER (inches)	PRESERVE OR REMOVE	TREE PROTECTION ZONE (TPZ) (feet radius)	FENCING	IRRIGATION
1	COAST REDWOOD	GOOD	13.1	REMOVE			
2	COAST REDWOOD	FAIR	3.8	REMOVE			
3	COAST REDWOOD	POOR	9.2	PRESERVE	5	Fence to be 5' from base of tree	Monthly
4	COAST REDWOOD	FAIR	13.1	PRESERVE	20	Chain link or chain-wire-orange plastic	Same as above
5	COAST LIVE OAK	FAIR	22.3	PRESERVE	2 to 10	Fence to be 5' from base of tree, with straw bale barrier surrounding trunk	
6	VALLEY OAK	POOR	26.1	PRESERVE	12	Same as above	Every two months
7	CA PEPPERTREE	VERY POOR-POOR	20.7	REMOVE			
8	COAST REDWOOD	FAIR	6.8	PRESERVE	5	STRAW BALE BARRIER	Monthly
9	COAST REDWOOD	POOR-FAIR	21.3, 12.7	REMOVE			
10	COAST REDWOOD	FAIR	21	REMOVE			
11	COAST REDWOOD	FAIR	24.8	REMOVE			
12	COAST REDWOOD	FAIR	18	REMOVE			
13	COAST REDWOOD	FAIR	22.9, 11.8	REMOVE			
14	COAST REDWOOD	FAIR-GOOD	22.3	REMOVE			
15	COAST REDWOOD	FAIR	18.6	REMOVE			
16	COAST REDWOOD	FAIR-GOOD	23.3	REMOVE			
17	COAST REDWOOD	POOR	6.1, 12.7	REMOVE			
18	COAST REDWOOD	POOR-FAIR	19.1, 10.8	REMOVE			

BARRETT & ASSOCIATES — ENVIRONMENTAL LANDSCAPE CONSULTING

#	COMMON NAME	CONDITION	DIAMETER (inches)	PRESERVE OR REMOVE	TREE PROTECTION ZONE (TPZ) (feet radius)	FENCING	IRRIGATION
19	COAST REDWOOD	POOR	17.8	REMOVE			
20	COAST REDWOOD	FAIR	29.9	REMOVE			
21	Canary Island pine	POOR	13.6	REMOVE			
22	Canary Island pine	POOR	18.2, 16.9	REMOVE			
23	Canary Island pine	POOR	23.9	REMOVE			
24	Canary Island pine	POOR	22.5	REMOVE			
25	Canary Island pine	POOR-FAIR	22.3	REMOVE			
26	Canary Island pine	POOR	16.9	REMOVE			
27	Coast live oak	FAIR	10.2	PRESERVE	12	Chain-link or visible wire-orange plastic	
28	Coast live oak	FAIR	10.8	PRESERVE	12	Chain-link or visible wire-orange plastic	
29	Canary Island pine	VERY POOR-POOR	12.3	REMOVE			
30	Canary Island pine	VERY POOR-POOR	15.4	REMOVE			
31	Italian stone pine	FAIR	33.2	PRESERVE	30	Chain-link or visible wire-orange plastic	

LEGEND

P.U.E.	PUBLIC UTILITY EASEMENT PER (173 PM 32).
P.A.U.E.	PRIVATE ACCESS AND UTILITY EASMENT PER (173 PM 32)
E.B.M.U.D.	PUBLIC WATER LINE EASEMENT PER (173 PM 32).
RW	REDWOOD TREE
(485)	PROPOSED ELEVATION
(X)	PROPOSED GRADE ELEVATION
GS	GROUND ON SLOPE
(456)	PROPOSED CONTOUR
456	EXISTING CONTOUR
X461.0	SPOT ELEVATION
TW	TOP OF WALL
BW	BOTTOM OF WALL
DS	PROPOSED DOWN SPOUT
LFF	LOWER FINISH FLOOR
UFF	UPPER FINISH FLOOR
	PROPOSED STORM DRAIN
	DENOTES PAVING
	DENOTES TURF BLOCK
	DENOTES STACKED BROKEN CONCRETE WALLS TO BEREMOVED
®X	DENOTES TREE TO BE REMOVED

CONNECT ROOF LEADERS ALONG WEST SIDE OF HOUSE TO NEW 6" STORM
ROOF LEADERS ARE SHOWN SCHEMATICALLY

CENTER LINE PG&E R/W (PER 985 OR 328) NO WIDTH OF RECORD LOCATION SCALED PER (53 M 12)

SESSIONS ROAD

SIERRA VISTA WAY (FORMERLY FIRST STREET) (50' WIDE)

1.0' WIDE PAVED DRAINAGE SWALE

CONSTRUCT CHRISTY "V64" INLET

REMOVE STACKED BROKEN CONCRETE WALL TO PROPERTY LINE

CREATE 2' WIDE BY 9' DEEP SWALE. LINE WITH FACING CLASS ROCK. SEE DETAIL

ROOF LEADERS TO DRAIN TO SWALE
ROOF LEADERS SHOWN SCHEMATICALLY

CONSTRUCT 3' HI RETAINING WALL

INSTALL CHRISTY "U21" INLET AT BACK OF EXISTING WOOD WALL WITH 6" OUTLET PIPE TO EXISTING CURB INLET.
SAW CUT EXISTING SIDEWALK AND CORE DRILL THROUGH BACK OF INLET.
INSTALL 6" STORM DRAIN. POUR NEW CONCRETE SIDEWALK TO CONFORM TO EXISTING.

STACKED BROKEN CONCRETE WALL TO BE REMOVED TO PROPERTY LINE

CENTER LINE PG&E R/W (PER 985 OR 328) NO WIDTH OF RECORD LOCATION SCALED PER (53 M 12)

NOTE
ANY AND ALL UNDERGROUND UTILITY LOCATIONS SHOWN HEREON ARE APPROXIMATE LOCATIONS DERIVED FROM AVAILABLE RECORDS.
EXISTING UNDERGROUND UTILITY LOCATIONS ARE APPROXIMATE ONLY. CONTACT UNDERGROUND SERVICE ALERT (USA) AT 1-800-227-2600 48 HOURS PRIOR TO DIGGING.

DRAINAGE SWALE FOR ROOF LEADERS

CONTOUR INTERVAL = 2'

SCALE: 1"=10'

PARCEL A
173 PM 32

SWARTS
APN 232-052-010

RECEIVED
APR 03 2008
CITY OF LAFAYETTE PLANNING DEPT.

HDP47-07

REV: 03-28-08
REV: 01-29-08
REV: 01-11-08
REV: 10-31-07
REV: 10-29-07
REV: 10-23-07
REV: 10-19-07
REV: 9-21-07
REV: 9-19-07

PRELIMINARY SITE MAP OF A PORTION OF LOT 66 LA CANYADA PARK – UNIT NO. 2 (55 M 12) CITY OF LAFAYETTE CONTRA COSTA COUNTY, CALIFORNIA

SCHELL AND MARTIN, INC.
LAND SURVEYING AND CIVIL ENGINEERING
3377 MT. DIABLO BOULEVARD
LAFAYETTE, CALIFORNIA 925 283-8111

FOR: DICK HOLT
85 MORAGA WAY
ORINDA, CA. 94563

REGISTERED PROFESSIONAL ENGINEER — HOWARD G. MARTIN — No. 54357 — EXP. 12-31-09 — CIVIL

HOWARD G. MARTIN LS 6690
EXP. DATE 12-31-09

BY HGM/RGA FB 494 P 40-46 50-61 JOB NO. 401-03A
DATE 10/27/2003 SCALE 1"= 10' SHEET 2 OF 2

TREE SURVEY

C:\0_DRIVE\PROJECTS\401\401-03\401-03 SURVEY SITE PLAN 2 28 08 v4 fr: Mar 28 10:42:22 2008

HEHMEYER
1966 Tice Valley Blvd., #507
Walnut Creek, CA 94595

925 969 1744

RECEIVED
DEC 12 2008
CITY OF LAFAYETTE
PLANNING DEPT.

December 12, 2008

City Council
City of Lafayette
California

Re: Section 1 Appeal by Richard Holt Re denial of HDP47-07
And V17-08 for hillside development permit and single residence
On lot at Sierra Vista Way and Sessions Road
(Tract5 5332, Lot 66) APN 2332-052-019

Dear City Council members:

There can be no variance from an easement, let alone a deeded easement. A court and only a court could modify the easements owned by the homeowners up Sessions road so that the LLC's home could be built. The City has no authority to grant a variance from the easement as it now stands.

A variance is only from zoning ordinances, and cannot be from any privately owned deeded easement. Therefore, no county or city has legal authority to grant a "variance" from a deeded easement- period.

The city council has been misinformed on the law and their authority under the law.

Furthermore, even if there were no easements at all on lot 66, the zoning variances proposed in this case (variance from setbacks from the road, other setbacks, height limits, tree removal, proximity to neighboring houses, and others) are highly questionable and arguably do not meet the minimum standards for factual findings that must exist for legitimate variances .

Collectively (and individually) the proposed variances are without legal justification and would constitute a "special privilege". herefore even the proposed variances from the zoning regulations cannot legally be granted in this case.

Attached is a document entitled the Planner's Training Series: The Variance. It is a ten page document published by the Governor's Office of Planning and Research in Sacramento.

This document explains that a variance is "...a limited exception to the usual requirements of local zoning."

Further, this document explains that "Self-induced hardship is not grounds for variance approval."

The homeowners have pointed out this legal fact of life from day one of this process. The lot line to lot line easement is a "self-induced hardship," as is the road itself.

In fact, even absent the lot line to lot line easement, Holt and his investors could not build the house. You cannot split a lot with a road (a self-induced hardship) and then apply to build a house on one of the two tiny portions of that lot which are created by the road. The constrained site on which Mr. Holt and his investors wish to build a home cannot be used to

build a home if variances are necessary from the conditions due to the road which were created by prior lot owners.

These facts are just a few among many which explain why even the variances being considered by the Council from the paved road which is on Lot 66, much less from the Petar Jakovina Trail easement and from the lot line to lot line easement, are not within the legal authority of the Council to consider or grant.

This house cannot be sited unless variances are granted. None can be lawfully granted in this situation.

This application must be denied forthwith.

Yours very truly,

Carol M. Hehmeyer

Attachment: The Variance

THE PLANNER'S TRAINING SERIES:

The Variance

Governor's Office of Planning and Research
1400 Tenth Street • Sacramento, CA 95814 • 916-445-0613

July 1997

This document is one in a series prepared by the Office of Planning and Research (OPR) on topics of general interest to planners. As with the rest of this series, its primary purpose is to provide both a reference for experienced planners and training materials for new planners, planning commissioners, and zoning board members. Citations are made to pertinent sections of the California statutes and to court decisions in order to provide the reader the opportunity to do additional research on their own. Unless otherwise noted, all statutory references are to the California Government Code.

- What is a Variance?
- Enabling Legislation
- Procedure
  - Public Hearing
  - California Environmental Quality Act
  - Permit Streamlining Act
- Limitations on the Common Variances
- Other Types of Variances
  - Parking Variance
  - Open-Space Variance
  - "Granny" Unit Variance
- Variance Findings
- Conditions of Approval
- Examples
  - Cases Upholding Variance Approvals
  - Cases Overturning Variance Approvals
- Variance Checklist
- Bibliography

WHAT IS A VARIANCE?

Simply put, a variance is a limited exception to the usual requirements of local zoning. As the following discussion will explain, when a city or county is confronted with development on an unusual piece of property, the variance procedure can lend some flexibility to the usual standards of the zoning ordinance. Approval of a variance allows the property owner "to use his property in a manner basically consistent with the established regulations with such minor variations as will place him in parity with other property

owners in the same zone" (*Longtin's California Land Use*, 2nd edition).

TOP

ENABLING LEGISLATION

State law specifies the basic rules under which counties and general law cities may consider variance proposals. Charter cities are not subject to these procedures unless they have incorporated them into their municipal ordinance. The following discussion will take a detailed look at the state law relating to variances in counties and general law cities.

The authority to consider variances is as follows:

"Variances from the terms of the zoning ordinances shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification."

"Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated."

"A variance shall not be granted for a parcel of property which authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property. The provisions of this section shall not apply to conditional use permits." (Section 65906)

Later in this paper, we will take a brief look at three other variance statutes. Section 65906.5 authorizes the grant of a variance from the parking requirements of a zoning ordinance in order to allow parking to occur off-site or for in-lieu fees to be paid. Section 65911 authorizes the granting of variances in open space zones. Section 65852.1 provides that a variance may be approved allowing a second dwelling unit on property zoned for single-family residential use if the occupant is 62 years or older.

TOP

PROCEDURE

Approval of a variance is an administrative act. Unlike a rezoning or an amendment to a general plan, consideration of a variance does not involve the establishment of new codes, regulations, or policies, but rather applies the provisions of the zoning ordinance to a particular circumstance. State law provides that the city council or county board of supervisors may delegate responsibility for considering and deciding variance requests. Commonly, responsibility is delegated to a board of zoning adjustment or a zoning administrator.

Public Hearing

Section 65905 requires the city or county to hold a public hearing on proposed variances. Ten-days

advance notice of the hearing must be published in a newspaper of general circulation in the community and mailed directly to the applicant and land owner, as well as to owners of properties located within 300 feet of the site boundaries (Section 65091 provides detailed requirements). Nearby property owners must be provided notice even if their property is located outside the jurisdiction's boundaries (*Scott v. Indian Wells* (1972) 6 Cal.3d 541). The hearing must comply with the open meeting requirements set out in the Ralph M. Brown Open Meeting Act (Section 54950, et seq.).

The notice of hearing must include a description of the proposal and the variance process, the location of the property involved, the identity of the hearing body or administrator, and the date, time, and place of the public hearing (Section 65094). The notice must also specify whether the proposal has been determined to be categorically exempt or if a negative declaration or environmental impact report has been prepared. As much as possible, the hearing notice should be written in plain language and avoid planning jargon.

The purpose of the hearing is for the zoning board or zoning administrator to hear and consider the opinions of the proponent and nearby property owners. At the conclusion of the hearing, the board or administrator will decide whether or not to approve the variance. If the variance is approved, the board or administrator will adopt findings to support their action. Their decision, whether for approval or denial, can be appealed to a higher body (the planning commission, for example) in accordance with the city or county zoning ordinance.

Section 65901 allows the city council or county board of supervisors to specifically authorize its board of zoning adjustment or zoning administrator to decide variance applications without a public hearing. The local zoning ordinance must set out the particular types of variances subject to this rule, as well as the maximum extent of variation from standards which may be allowed. Notwithstanding the cavalier approach of Section 65901, the Office of Planning and Research recommends providing the applicant and neighboring property owners at least the opportunity to request a public hearing on any variance proposal which may affect their property rights. For example, the city may mail notice indicating that no hearing will be held unless specifically requested. This recognizes the due process guarantee of the U.S. Constitution and complies with the holding of the California Supreme Court in *Horn v. County of Ventura* (1979) 24 C.3d 605.

California Environmental Quality Act

Variances are subject to the California Environmental Quality Act (CEQA, Public Resources Code Section 21000, et seq.). Prior to the public hearing on the proposed variance, the city or county must evaluate the proposal to determine whether or not it may have a significant adverse effect on the environment. In most cases, a variance is sufficiently innocuous to be categorically exempt from environmental review (see Section 15305 of the state *CEQA Guidelines*). Where the proposal is not exempt, the city or county must prepare either a negative declaration indicating that the variance is not exempt, but nonetheless will have no significant effect, or an environmental impact report which describes the expected impacts of the proposal and the means to avoid or lessen those impacts.

Permit Streamlining Act

Variance proceedings are subject to the Permit Streamlining Act (Section 65920, et seq.). Accordingly, a variance proposal for which a negative declaration was adopted or a CEQA exemption used must be acted upon within three months of that action. If an Environmental Impact Report (EIR) was certified for the variance, the application must be acted upon within 6 months of that certification. Further, a variance cannot be disapproved solely to comply with these deadlines.

TOP

LIMITATIONS ON THE COMMON VARIANCES

Pursuant to Section 65906, a variance may be granted when:

(1) there are specific physical circumstances that distinguish the project site from its surroundings; and

(2) these unique circumstances would create an unnecessary hardship for the applicant if the usual zoning standards were imposed.

Variances are limited to those situations where the peculiar physical characteristics of a site make it difficult to develop under standard regulations. A variance is granted in order to bring the disadvantaged property up to the level of use enjoyed by nearby properties in the same zone. For instance, where the steep rear portion of a residential lot makes the site otherwise undevelopable, a variance might be approved to reduce the front yard setback and thereby create sufficient room for a home on the lot. Similarly, a parcel's shape might preclude construction of a garage unless side yard setback requirements are reduced by approval of a variance.

Review of a proposed variance must be limited solely to the physical circumstances of the property. "The standard of hardship with regard to applications for variances relates to the property, not to the person who owns it" (*California Zoning Practice*, Hagman, et al.). Financial hardship, community benefit, or the worthiness of the project are not considerations in determining whether to approve a variance (*Orinda Association v. Board of Supervisors* (1986) 182 Cal.App.3d 1145). As *California Zoning Practice* succinctly explains, "[t]he test of bringing property to parity is based on equality of the property rather than equality of the owners." (emphasis added)

Furthermore, consideration of a variance must focus upon the zoning standard or standards from which an exception is being requested. "[A] variance applicant may not earn immunity from one code provision merely by overcompliance with others. Otherwise, the board charged with reviewing development proposals 'would then be empowered to decide which code provisions to enforce in any given case; that power does not properly repose in any administrative tribunal' (*Broadway, Laguna Assn. v. Board of Permit Appeals* (1967) 66 Cal.2d 767)." (*Orinda Association v. Board of Supervisors*, supra).

Variances are only for use in unusual, individual circumstances. There is no basis for granting a variance if the circumstances of the project site cannot be distinguished from those on surrounding lots. For example, all things being equal, in a subdivision where lots are uniformly 40 feet wide, there is no basis for allowing one lot to be developed with reduced side yard setbacks.

Conditions must be imposed on a variance when necessary to avoid granting the applicant a special privilege. As will be discussed later, these conditions must be reasonably related to the development being authorized.

A variance does not change the zoning of the project site, so it cannot permit uses other than those already allowed under existing zoning. Section 65906 prohibits the approval of "use variances." Nor is a variance intended to be used in place of design review standards. The law does not intend that every or even one-quarter of the properties on a block be granted the same kind of variance. If development within a particular area is commonly leading to requests for consideration of variances, then the city or county

should reassess the standards of the applicable zone and, if necessary, change them.

At the same time, the approval or denial of a variance does not create a precedent for subsequent variance requests. Because each variance is based upon special circumstances relating to the site for which it is proposed, the past grant or denial of variances for other properties in the area does not mandate similar action on the part of the hearing body (*Miller v. Board of Supervisors of Santa Barbara County* (1981) 122 Cal.App.3d 539).

The applicant for a variance bears the burden of proving that special circumstances exist to justify its granting (*PMI Mortgage Ins. Co. v. City of Pacific Grove* (1982) 128 Cal.App.3d 724). The hearing body must not approve a variance unless it can make written findings, supported by substantial evidence in the record, that the variance meets the criteria of Section 65906.

A variance runs with the land. Subsequent owners of the land continue to enjoy the variance. The original land owner cannot transfer the variance to another site, nor can the local agency approve a variance on the condition that it remain owned by a particular person (*Cohn v. County Board of Supervisors* (1955) 135 Cal.App.2d 180).

TOP

OTHER TYPES OF VARIANCES

State law also allows variances to required parking regulations, to open space zoning, and for "granny" units. Each of the following statutes has its own findings requirements, some of which differ from those of Section 65906. In all cases, public notice and hearing must be provided pursuant to Section 65905.

Parking variance (Section 65906.5):

"Notwithstanding section 65906, a variance may be granted from the parking requirements of a zoning ordinance in order that some or all of the required parking spaces be located offsite, including locations in other local jurisdictions, or that in-lieu fees or facilities be provided instead of the required parking spaces, if both the following conditions are met:

(a) The variance will be an incentive to, and a benefit for, the nonresidential development.

(b) The variance will facilitate access to the nonresidential development by patrons of public transit facilities, particularly guideway facilities."

Section 65906.5 authorizes variances to the non-residential (i.e., commercial, industrial, recreational, etc.), on-site parking requirements contained in a local zoning ordinance. Such a variance may authorize locating required parking spaces off site. It may also authorize the landowner to provide in-lieu fees or facilities instead of required parking spaces. It does not authorize reducing the number of required spaces unless in-lieu fees or facilities are provided.

The local agency must adopt findings describing the incentive and benefit being provided to the non-residential use. These findings must also describe how the variance will facilitate access to the development by riders of public transit.

Open-Space variance (Section 65911):

"Variances from the terms of open-space zoning ordinance shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.

"Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the property is situated. This section shall be literally and strictly interpreted and enforced so as to protect the interest of the public in the orderly growth and development of cities and counties and in the preservation and conservation of open-space lands."

This statute is nearly identical to Section 65906 and is subject to basically the same findings requirements. Its purpose is to clarify that variances may be granted to the terms of open-space zoning provided that the provisions of that zoning are not compromised.

"Granny" unit variance (Section 65852.1):

"Notwithstanding section 65906, any city, including a charter city, county, or city and county may issue a zoning variance, special use permit, or conditional use permit for a dwelling unit to be constructed, or which is attached to or detached from, a primary residence on a parcel zoned for a single-family residence, if the dwelling unit is intended for the sole occupancy of one adult or two adult persons who are 62 years of age or over, and the area of floor space of the attached dwelling unit does not exceed 30 percent of the existing living area or the area of the floor space of the detached dwelling unit does not exceed 1200 square feet."

Section 65852.1 allows a variance to be used like a conditional use permit in order to allow construction of an accessory dwelling for elderly residents. Prior to approval of a variance under Section 65852.1 the city or county must find that the resident or residents meet the age criteria, and that the floor area of the proposed unit does not exceed that allowed by the statute. The findings required for a common variance under Section 65906 do not apply.

In contrast to Section 65906, the granny unit statute applies both to charter and general law cities and specifically authorizes the granting of a "use" variance.

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VARIANCE FINDINGS

When approving a variance, the hearing body must make "findings of fact" to support its action (*Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 C.3d 506). The agency must also make the findings required by the California Environmental Quality Act (CEQA) and by local ordinance, if any.

Findings are important. They explain the hearing body's reasons for approving the proposal before it. The purpose for making findings is to "bridge the analytical gap between the raw evidence and ultimate decision" (Topanga, supra). In the event that the decision is challenged, a court will examine the evidence

embodied in the findings to determine whether the hearing body abused its discretion when acting on the variance. An abuse of discretion will be found when the agency did not proceed in a manner prescribed by law, when the decision is not supported by findings, and when the findings are not supported by evidence in the administrative record.

Variance findings must describe the special circumstances that physically differentiate the project site from its neighbors. Further, the findings must specify the "unnecessary hardship" that would result from these circumstances in the event that a variance was not approved.

Defensible findings are based on the pertinent evidence that was available to the decisionmakers. Findings should be more than a mere recitation of statutory requirements; they must provide the factual basis that leads to the conclusion drawn by the approving agency.

In the absence of findings, approval of the variance "would [amount] to the kind of 'special privilege' explicitly prohibited by Government Code section 65906." (*Orinda Association v. Board of Supervisors*, supra) For a detailed discussion of findings requirements, see OPR's publication entitled Bridging the Gap.

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CONDITIONS OF APPROVAL

Section 65906 requires that the variance be subjected to those conditions of approval necessary to ensure that it will not be a grant of special privilege. The conditions are meant to maintain parity between the variance site and surrounding properties. For example, if an increase in fence height is requested due to a steeply sloping rear yard, the approved height might be required to be low enough so that neighbors' views would not be obstructed and the increased height would not be noticeable.

The conditions which may be placed on a variance are limited by Section 65909. It requires that dedications of land must be "reasonably related" to the use of the property for which the variance is granted. In addition, a performance bond cannot be required for the installation of public improvements that are not reasonably related to the property use. Limitations on impact fees are described in the Mitigation Fee Act (Section 66000, et seq.).

Generally, the conditions applied to the variance must have an "essential nexus" to some legitimate public need or burden created as a result of the variance approval (*Nollan v. California Coastal Commission* (1987) 97 L.Ed2nd 677). Furthermore, there must be a "rough proportionality" between the extent of the condition and the particular demand or impact of the project.(*Dolan v. City of Tigard* (1994) 129 L.Ed2nd 304). For instance, if a variance is granted allowing a back yard fence to be built two feet higher than usual, there are probably no grounds to impose a condition requiring the landowner to contribute to a road improvement fund. However, it would be proper to regulate the design of the fence. The burden of proof to justify proposed exactions rests with the city or county (*Dolan*, supra).

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EXAMPLES

The following court cases illustrate when it may be proper to grant a variance and when it may not be. These cases are illustrations only and should not be used as the sole basis for granting or denying a variance.

Cases Upholding Variance Approvals

Special Circumstances

Special circumstances supported approval of a variance from off-street parking requirements for an apartment building when the building was to be located near three public parking garages and many of the tenants would not own cars (*Siller v. Board of Supervisors* (1962) 58 C.2d 479).

A variance reducing the amount of required off-street parking was justified when the landowner would otherwise have had to partially demolish a building and fill a portion of the bay below high tide line in order to meet the parking standard (*Zakessian v. City of Sausalito* (1972) 28 Cal.App.3d 794).

Distinction of the Site From its Surroundings

A court upheld issuance of a variance allowing expansion of a hotel without satisfying a requirement that 80% of its accommodations consist of detached cottages (*Miller v. Board of Supervisors of Santa Barbara County* (1981) 122 Cal.App.3d 539). The court held that the hotel in question could be distinguished from the other hotels in its zone because of landscaping and design features that dated from before zoning was enacted.

Cases Overturning Variance Approvals

Special Circumstances

Subsoil conditions that would increase the cost of building a high-rise and reduce its anticipated income, but which were common to similar high-rise structures, were not "special circumstances" sufficient to support the grant of a variance (*Broadway, Laguna, Etc. Assn. v. Board of Permit Appeals* (1967) 66 C.2d 767). The court reversed the city's approval.

Where a showing could not be made that special circumstances existed sufficient to distinguish the subject property from its neighbors, the city was not required to issue a variance (*PMI Mortgage Ins. Co. v. City of Pacific Grove* (1981) 128 Cal.App.3d 724).

Desirable project design, community benefit, and the alleged superiority of the proposed design to development under existing zoning regulations were irrelevant for purposes of judging whether or not to grant a variance (*Orinda Assn. v. Board of Supervisors* (1986) 182 Cal.App.3d 1145). The court held that a building height variance could not be granted, regardless of the alleged benefits of the project, absent a finding detailing the special circumstances that justified its issuance.

Distinction of the Site From its Surroundings

A variance allowing a 96-space mobilehome park on 28 acres in a mountainous area that was zoned for single residences on 1-acre minimum lots was overturned because the county's findings only described the subject property and not the conditions which distinguished it from surrounding properties (Topanga Assn. for a Scenic Community v. County of Los Angeles 91974) 11 C.3d 506).

Unnecessary Hardship

Self-induced hardship is not grounds for variance approval. Voluntary sale of an adjoining parcel of land leaving a remainder parcel that was too small for the intended purpose was not an "unnecessary hardship" for purposes of granting a variance (Town of Atherton v. Templeton (1961) 198 Cal.App.2d 146.

Procedure/Public Notice

A property owner's failure to receive notification of a zone change was not sufficient basis for later granting a variance from the new zone's floor area ratio standards (Cow Hollow Improvement Club v. Board of Permit Appeals (1966) 245 Cal.App.2d 160). The variance approval was overturned by the court.

A hearing notice which notified neighbors of a variance for a proposed garage "to provide shelter and security for vehicles now parked on [the] driveway" was insufficient to apprise them of the potential impacts on their property rights of the actual consideration of a two-story dwelling and garage unit (Drum v. Fresno County Department of Public Works (1983) 144 Cal.App.3d 777). The inaccurate project description failed to meet statutory and Constitutional due process notice requirements.

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APPENDIX

Variance Checklist

If a variance is to be approved, all of the following questions must be answered affirmatively.

1. Are there special circumstances applicable to the proposal site which distinguish it from nearby properties with the same zoning?

If yes, check at least one of the following to identify the circumstances:

size
shape
topography
location
surroundings

2. Do the above circumstances create an "unnecessary hardship" unique to the involved property which would deprive it of privileges enjoyed by nearby properties with the same zoning?

If yes, explain.

3. Is the use for which the variance is proposed already allowed in that zone?

If yes, cite the applicable code.

4. Are the proposed conditions of approval related to and proportional to the impacts caused by the use

proposed by the variance?

If yes, explain.

5. Do the proposed conditions of approval ensure that the variance will not be a grant of special privilege?

If yes, explain.

6. Have findings been drafted which specify the facts supporting approval of the variance on the basis of each of the above items?

TOP

BIBLIOGRAPHY

For more information about variances, we recommend the following references.

Bridging the Gap: Using Findings in Local Land Use Decisions, by Robert Cervantes, second edition (Governor's Office of Planning and Research), 1989. This booklet outlines the principles of findings in detail.

California Land Use and Planning Law, by Daniel J. Curtin Jr., 1996 edition (Solano Press, Point Arena, CA), revised annually. A look at the planning, zoning, subdivision, and environmental quality laws, including variances, as interpreted by numerous court cases.

California Zoning Practice, by Donald Hagman, et al., April 1996 Supplement by John K. Chapin (Continuing Education of the Bar, Berkeley, CA), 1969. This text reviews state zoning law in detail.

Longtin's California Land Use, 2nd edition, by James Longtin, 1996 Supplement (Local Government Publications, Malibu, CA), 1988. This reference text on planning and land use law contains an excellent discussion of the variance, legal considerations, and limits on exactions.

"Variances and the Zoning Board," by Frederick H. Bair, Jr., Planning, July 1984, pp. 20

TOP

From: Jeff Swarts [mailto:swartsco@yahoo.com]
Sent: Sunday, December 14, 2008 11:24 PM
To: Robbins, Joanne
Subject: city council letter

December 11, 2008
Council Members,

As I pointed out in much of my correspondence submitted to the Planning Commission and the Planning Department, a series of poor decisions have been made by the city attorney based on the information put before her by the applicant that now puts the city at risk. Namely, Lot 66 may, in fact be a "legal lot of record", but she changed its status from a "non-buildable lot" to a "buildable lot". This happened through a series of documented mistakes and omissions put forth by the applicant and his attorney, during private meetings with her. This initial presentation to the city attorney from which she made her legal determinations CANNOT be ignored by the council. The city attorney is in a position now where she can't backtrack but the council still has the opportunity to do the right thing and look at the true facts, not just what the applicant deems as the facts. What's odd is the city attorney refused to talk to the homeowners for 2 years envolving these property rights.

In my opinion it is extremely important for people in positions of power, even if voluntary, not be perceived as possibly using those positions and their intimate knowledge of the system for personal gain, and possibly casting suspicion and doubt on those around them. I think they should hold themselves to a higher standard and represent what is best for the community. As the recently retired former chair of the Planning Commission, Richard Holt should know better.

I will list reasons why this lot has been unbuildable, then, why this application should be denied, and how Mr. Holt, should start all over again in the best interest of everyone, especially your constituents.

1. Mr. Sessions purchased Lot 66 some 50 years ago not to build on, but to run a road through to access his land locked property. The property has been appraised at a non-buildable value ever since.
2. There are at least 8 seperate lot-line to lot-line access and utility easements insured on all 22 seperate deeds up the hill.
3. There is only 4000 sq. ft. of buildable land on the extreme eastern portion of this lot.

4. The water meter was removed from this lot when Petar Jakovina applied for a gate-house and gate; the city denied Mr. Jakovina's application.
5. I have an un recorded easement that has been in continual use since 1947 across Lot 66 prior to the Sierra Vista Way subdivision to access my old garage, and my tenants and I currently use it for overflow parking, and we have never been restricted from using it.
6. The city has always stated that it is an unbuildable lot.
7. The lot was purchased for somewhere around $15,000 - $20,000 well below market value by Mr. Holt.
8. The uphill homeowners and I have maintained this lot and its plantings for decades.

The purpose of Lot 66 is to be the entrance to two subdivisions, 22 home on large parcels some exceeding 8 acres. By allowing Sessions road to appear as Mr. Holt's driveway, the city is granting the former chair of Planning Commission "Special Privileges" at the expense of the other 22 homeowners reducing their formal entrance to a "flag lot" appearance.

As I pointed out in earlier emails and letters to planner, Christine Sinnette, there are numerous errors and omissions in Mr. Holt's original application and map that the city attorney based her findings on allowing this application process to move forward that were never noticed or corrected until us neighbors pointed them out at the meetings. At that point, the application should have been immediately dismissed as all ordinary applicants would have been! I keep hearing denials of favoritism but how else do you account for this extraordinary chain of special allowances?

Here are the errors and omissions that bamboozled your city attorney:

1. The engineer "mistakenly" drew the road easement 50' wide on the application plot plan; this was reviewed and approved by the city attorney and Planning staff. In fact, there are 22 separate homeowner deeds that show this road easement to be from lot-line to lot-line.
2. The applicant "failed" to show any type of hiking trail easement on his application, even though a 50' wide one exists on all the 22 home owner deeds.
3. The topography lines for half the lot were omitted to possibly hide the fact that the lot is centered in the middle of a steep, narrow canyon.
4. A 4700sq.ft. home was approved for a 4000sq.ft. "buildable area" of the lot located along the eastern property line.
5. The original home at its peak stood 67' over my home, only 13' 8" away from it. Its' cantilevered deck towered 30+' above my master bedroom French door, only 8' 8" away from it, (5' from our common property line). A falling object from the original proposed home could serious injure or kill someone on my property.
6. The home was within 10', and the shop/garage was approved to set within 5' of our common property lines with no demands from the Planning Department for a variance.
7. The home was allowed to be built within 20 ' of Sessions Road without a variance.
8. The home did not respect the set-back requirements for a home fronting two separate streets, like a typical corner lot.
9. This lot has not had a traffic study, even though it is often blocked by large trucks getting stuck with their rear wheels spinning off the ground. A large home would block all views of the intersection, as well as Mr. Holt's driveway as one descends down Sessions Road. It would be very dangerous for someone to back out onto Sessions Road from Mr. Holt's driveway while another car is descending down the mountain.
10. This is really two corner lots, Lots 66A and 66B and soon could expect another house request across the street, from Mr. Holt if this project is approved.
11. If it is, in fact, a corner lot – as the Planning Commission agreed - or two corner lots, then they don't meet the minimum lot size requirement of 20,000 sq. ft. That too should require a variance request.
12. The original application wanted to remove most of the redwood tree grove that was a requirement for the original Sessions Road construction; (a recently missing document from the file). I believe a Lafayette Tree Variance is also required here.

13. I believe Mr. Holt some time ago removed all the utility easements up the hill and as I understand it, he recently put them back in another location on the lot.
14. Mr. Holt should have been aware of the lot line-to-lot line road, and a 50' wide trail easement in the deeds to the upper subdivision homes since he represented some of these home sales .
15.

Now we have scores of new problems. We came to the meeting Monday night to hear an appeal to his denied project from the Planning Commission but are confronted with a new application. Many of us were not notified of changes and the city did not provide enough handouts and time for us to properly review them. The council seems willing to allow Mr. Holt and his attorney to re-define what an appeal is. Would you allow any Lafayette property owner to do this as well? I think not.
Mr. Holt's proposed home plans have changed (again). He moved it down the hill; it is 200 sq. ft. larger. The windows are all along his hallways that start at 5'. People over 5' in height wearing shoes can still stare down into our (once) private rear and side yards and bedrooms, (once) the trees are removed. Council member Anduri grilled my wife about privacy who was totally perplexed because Holt's changes were not made clear to us.
It is just backwards and wrong to site and mass a home on a lot that may in fact have neither a lot-line to lo-line easement nor a 50' wide easement but perhaps a compromise. Our engineer would liketo see a minimum of 70' for the road easement to accommodate both the widening of the road, and to increase the curves to reduce the steepness at the lower portion of the lot.
This whole process has been flawed from the beginning. The Planning Commission realized this and the City Council should also know they will be held accountable for treating Mr. Holt's application with special regard not given to other Lafayette property owners.
I am especially disheartened because, as a builder, I have gone through this process before. I have never seen so many different mistakes and omissions in an application while still being allowed to proceed forward. The planners and council members are willing to ignore our arguments and instead, accept Mr. Bowie's statements, as unsupported as they may be.
I am insulted by several of the members' comments Monday night that you saw no problems with everything from privacy to fire safety when they walked the site. We have enjoyed a beautiful private back and side yards and bedroom views for over thirty years. We do not welcome people staring down into our bedrooms and rear yard while we sunbath around our spa. How would you like it? We certainly hope this letter is taken to heart so we won't be forced out of our beloved home, one we plan to retire in.
How can you rule in direct conflict to the existing Planning Commission, retired council members, mayors, commissioners, and neighbors in our community who have stated their opposition to this project? In fact I haven't seen one person in favor of this project that isn't connected economically to Mr. Holt, or is currently sitting on the city council!
The council denied granting any special favor toward Mr. Holt. There is only one way to prove this. Deny this appeal. For the record, if this appeal is approved, I ask each member to state his or her prior business history with Mr. Holt, listing each city project where both parties collaborated. The record should also reflect all private social meetings between Mr. Holt and the council member.
Do the right thing and reject this appeal. Mr. Holt may start over if he chooses, as a private citizen, because the way things stand, moving this project forward is setting a bad precedence: anyone could find an encumbered, unsuitable lot in Lafayette, turn in a fact flawed application, use this application and procedure as an precedent, and make big money. The council will be held accountable.

Jeff Swarts

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CITY OF LAFAYETTE
PLANNING DEPT.

December 26, 2008

Lafayette City Council
Lafayette City Planning Services Division
3675 Mt. Diablo Blvd., -- Suite 210
Lafayette, CA 94549

Re: HDP47-07 RICHARD HOLT (APPLICANT), R-10 ZONING – Section 1 Appeal by Richard Holt, re UNANIMOUS denial of HDP47-07 and V17-08, for hillside development permit and single residence on Lot at Sierra Vista Way and Sessions Road
(Tract 5332, Lot 66)
APN 2332-052-019

Dear City Council:

Please place this letter in the file for the above noted case and also put a copy of it in the file with the staff report given to the Council members at the next scheduled hearing for which it is timely filed.

Attached hereto is a retyped copy of a letter from which I read at the December 8, 2008 hearing on this matter. I had submitted eight (8)

copies of this letter to the clerk at the hearing, for submission to the Council members and, of course, filing.

Miraculously, not one of those copies was placed in the file on this appeal. Therefore, I am herewith refilling the letter in retyped form.

The letter, and my talk which accompanied it at the December 8 hearing, dealt with the fact that if this Council even grants Mr. Richard Holt and his co-investors in LaMorinda Properties LLC (the legal owner of Lot 66) the right to "site" a house on Lot 66, that action by the Council will be a "taking" under the law.

Attorney Les Hausrath, at that same hearing, spoke for some of the homeowners on Sessions Road, explaining that if NO house is "sited" on Lot 66, there will be no taking from the investors in Lot 66, Mr. Richard Holt, or Lamorinda Properties LLC.

Both points are correct, as a matter of law.

I also explained that the minute the Council's ruling permitting a "siting" of any structure on Lot 66 becomes final, the homeowners have a right to sue for defamation of the title to their lot line to lot line easements over Lot 66, for access (ingress and egress) and for utilities.

Their titles are all insured by local title companies. Those companies will be put on notice to defend title and are required by law to sue to defend their title. This is what people pay for when they purchase title insurance, as all of these homeowners have done.

The City Attorney responded saying that if the homeowners prevail in such a suit, Mr. Holt will indemnify the City for any damages, attorneys fees, and costs awarded against it by the Court. She added that if that were to occur, then this council need only grant a variance from the easement to Mr. Holt and his associates, and the house can still be constructed on Lot 66.

My subsequent letters will address this outrageously fallacious legal advice.

Yours very truly,

Carol M. Hehmeyer

Carol M. Hehmeyer

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December 8, 2008

Lafayette City Council
Lafayette City Planning Services Division
3675 Mt. Diablo Blvd., -- Suite 210
Lafayette, CA 94549

Re: HDP47-07 RICHARD HOLT (APPLICANT), R-10 ZONING – Section 1 Appeal by Richard Holt, re UNANIMOUS denial of HDP47-07 and V17-08, for hillside development permit and single residence on Lot at Sierra Vista Way and Sessions Road
(Tract 5332, Lot 66)
APN 2332-052-019

Dear City Council:

Please place this letter in the file for the above noted case and also put a copy of it in the file with the staff report given to the Council members at the next scheduled hearing for which it is timely filed.

This is a re-typed version of a letter I submitted on December 8, 2008. Due to a computer crash, I have had to re type it fromdraft copies on hand so it may not be a precise duplicate of the letter which I submitted on that date, and from which I spoke, but it is about the same letter. (I gave out all of the originals on Dec. 8)

I am Carol M. Hehmeyer, a licensed trial attorney in California who has litigated easement issues, and who resided at 11 Sessions Road, Lafayette, until this last May (of 2008).

I cannot believe we are here tonight! This Council is considering overruling a UNANIMOUS decision of the City Planning Commission denying the third Holt LLC application after two years of intense hearings, testimony, and document review.

You are being asked to take the vested, deeded, recorded property rights of 22 Lafayette families by permitting a structure to be built on property which is entirely covered by eight separate, original easements. That is called, in the law, a "taking."

You are considering granting Mr. Holt's investment group the right to build a home on a lot that has been determined unbuildable by the Contra Costa County Assessor and thus, necessarily, by the County Counsel, for about fifty years. The lot is assessed today at about $20,000 for a reason.

You are required by law to respect these easements.

Numerous inquiries about building on this lot have been refused by City Planning Staff for decades. Mr. Holt's first Application was declined by filing by a Senior Planning staffer two years before the filing of the second submitted Application. That senior staffer correctly pointed out that the deeded, recorded, vested easements cover this entire lot and prohibit building on it.

///

Mr. Holt and his attorney then spent **two full years** in covert, clandestine, secret meetings and correspondence with Mala Subramanian, your hourly City Attorney. The correspondence generated during this time has been disclosed in the file, at least partially.

One letter from Mala Subramanian appears in that file in which she staunchly and correctly requires Mr. Holt to quiet title to the property and refuses to permit him to file the Application until he does that. No correspondence from her appears in the record to the contrary before the second Application submitted was suddenly accepted for filing by Junior Planner Glenda Warmouth in about March of 2007.

After intense hearings, testimony, and review of documents, Mr. Holt withdrew the LLC's second application, the first one accepted for filing.

Then, in about March of 2008, he filed this application, the third, and second one accepted for filing.

At the last hearing on this matter, Council members asked why no one had quieted title to this property, as to the easements.

That is an excellent question. It would cost the 22 homeowners who have vested property rights in the entire lot at least $25,000 to $50,000 to litigate a quiet title action in the Superior Court and they would have no hope of recovering their attorneys' fees when they prevailed.

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Thus, while a lawsuit is not likely to be brought by the homeowners before any final ruling by this Council because of the massive, unrecoverable costs and fees of the initial undertaking (in the Superior Court), such a lawsuit is much more likely if an adverse ruling is made, as costs and fees will be recoverable.

If only one homeowner sued and prevailed as to only one of his deeded easements over Lot 66, Mr. Holt could not build.

Why haven't Mr. Holt and his investors filed for quiet title?

He would have to pay the same amount or much more to litigate this issue. He would have to prevail against each and all of the easements in vested, recorded deeds held by each of the owners of 22 homes. Each of these properties has one to four of the eight original grants of easement to the entirety of Lot 66, for access and utilities. If Mr. Holt lost even one of those easement claims against just one of the property owners, he would not be able to quiet title to build.

This is not the typical, simple easement issue where one neighbor makes a claim against an easement owned, or claimed, by one other neighbor.

Each original easement is separate from the others. They do not "build" upon one another and are not subject to a "chain of title" each for the other. There is no such "chain of title" legal concept for easements. Each easement stands alone as a separate grant and reinforces all of the others. They are compatible and reinforcing. Almost all of the original grants have been deeded separately to several properties, and most property owners hold several individual grants.

Further, Mr. Holt well knows that he would lose the court case and he would have no hope of recovering his attorney's fees or costs. He really has no chance with the court, but he has a good chance with you.

However, if you rule against the property owners and take away the vested and valuable rights granted in the 22 separate deeds, then the property owners will be victims of what the law calls a "taking." That "taking" will be monstrous and outrageous.

The homeowners will, sadly, have a right to sue and recover their attorneys' fees, costs, and damages against the City and LaMorinda Properties, LLC. Their Title Companies have insured title to those easements, and wil be required by law to defend that title to each of the easements in each deed, and they, of course, will seek attorneys fees and costs from the city. The liability to Lafayette will be enormous, and the City will lose and pay.

Respect these easements and do not take them away without a Court ruling on the subject which permits the La Morinda Properties LLC to build on Lot 66. Do as the Senior Planner said. Do as the City Attorney originally ordered. Follow state law. Respect the decision of the County Counsel and the Assessors' Office.

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Heed the warning of Ned Robinson who advised you that never, in over 30 years of practicing real estate law in this specialty, has he ever seen a City permit a building to be sited or constructed on a deeded, recorded easement (much less on many of them).

It is up to the applicant, not the homeowners, to show you quiet title to build over the easements. To rule otherwise would be an outrage, and would put the City at immense litigation risk.

Respectfully submitted,

Carol M. Hehmeyer

Carol M. Hehmeyer
Resident, Concord
Owner of 11 Sessions Road, Lafayette
Until May of 2008

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3675 Mt. Diablo Blvd., -- Suite 210
Lafayette, CA 94549

Re: HDP47-07 RICHARD HOLT (APPLICANT), R-10 ZONING – Section 1 Appeal by Richard Holt, re UNANIMOUS denial of HDP47-07 and V17-08, for hillside development permit and single residence on Lot at Sierra Vista Way and Sessions Road
(Tract 5332, Lot 66)
APN 2332-052-019

Dear City Council:

Please place this letter in the file for the above noted case and also put a copy of it in the file with the staff report given to the Council members at the next scheduled hearing for which it is timely filed.

To say that the City of Lafayette does not recognize easements for the purposes of siting homes, as the City Attorney has stated, is legally absurd.

With that position in place, a City could decide not to respect deeded boundary lines and could give a variance to the deeded title to property so that a party could build a house or deck on another person's property.

With that position in place, a City could grant someone the right to build a house on another person's deeded, recorded property.

In fact, with this position taken by the Lafayette City Attorney, that is precisely what she proposes this Council permit be done.

A deed to a lot is a property right. A deed to an easement is also a property right. To build or site a house on a deeded, recorded easement is to build or site on another person's property.

The City is bound to respect these deeded easement rights, which are protected by state law. Until a court of competent jurisdiction has ruled upon the validity and extent of a disputed easement, and has permitted siting a house on it, the City has no authority to ignore it.

In this case, attorney Bouie has claimed that there is a 50 foot deeded road easement through Lot 66. There is not. The deeds actually have to be read for any person to understand that fact though.

There are, as I have stated many times before, about eight (8) different, original grants of easement from lot line to lot line over Lot 66, for access (ingress and egress) and for utilities.

There has not been much discussion of the utility easements over this entire lot. Though PG&E did move its use of the easement on Lot 66 from one location to another on the lot, an easement over the entire lot remains, for utilities.

PG&E, the water district, the sanitary district, and any other public utility can use that lot and any of it for utilities, to benefit the uphill homeowners.

Attached is a document published by the Castro Valley Sanitary District which applies to just one of the many types of utility easements granted over, under, above and through Lot 66, lot line to lot line. (utilities can include water, electricity, gas, etc.)

No structure can be lawfully sited on Lot 66.

Respectfully submitted,

Carol M. Hehmeyer

Attachment

CASTRO VALLEY SANITARY DISTRICT

RECYCLING & GARBAGE SERVICES
- Recycling Guide
- Frequently Asked Questions
- Recycled Art Contest
- Solid Waste Department
- Earth Day

WASTE WATER SERVICES
- Description of Services
- Lateral Grants
- Permits and Fees
- Where's My Lateral?
- Standard Specifications
- Projects
- Easements

ADMINISTRATION
- Annual Report
- Calendar of Events
- Board of Directors
- Board Business
- District Newsletter
- Financial Information
- General Information
- Press Releases
- Employment Opportunities
- Community Advisory Committee

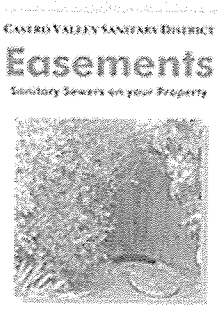
EASEMENTS

Sanitary Sewers on your Property

- **What is an Easement?**

  An Easement is a legal document that conveys limited property rights from the Grantor (Property Owner) to the Grantee (Castro Valley Sanitary District). This document is usually recorded in the office of the Alameda County Recorder.

  A sanitary sewer easement creates a non-exclusive, perpetual right to use a portion of your property for sanitary sewer purposes. This provides the District with access rights to repair, replace, inspect, enlarge, change, maintain, test and/or remove the sanitary sewer located within the easement.



To view or pr
the informati
to the left in
brochure forr

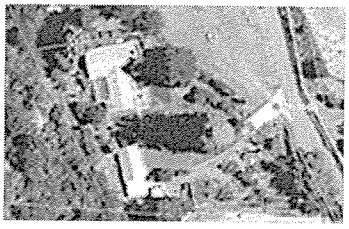
click below tc
view a .pdf.

Easy Guide tc
Easements
(240k)

If you wish tc
have a copy
mailed to you
contact (510)
537-0757.

- **Who owns and maintains the Easement?**

  The Property Owner continues to own the land and has only given up defined rights on the portion of land used for the easement. Maintenance of the property within the easement is the responsibility of the Property Owner.



The location will be determined from recorded maps or a grant of easement document.

- **What is the size and location of the Easement?**

  The easement is typically ten feet wide (five feet on either side of the sanitary sewer), however, the size may vary. The location will be determined from recorded maps or a grant of easement document. If you are unfamiliar with the size and location of your easement please contact your title company or the District at (510) 537-0757.

- **Who can enter my property?**

  The District, if it has an easement, may go onto the easement at any time. The District may, on occasion, have a Contractor present to perform specific tasks relating to the District's operations. We will make an effort to notify you prior to entry, however, in the case of an emergency we may need to enter without prior notification. Please request, at any time, to see District personnel photo identification cards, or contact the District at (510) 537-0757.

- **Can I make improvements within the Easement?**

  Easement are typically granted to the District with the understanding that the property owner may make improvements to the surface such as fences, asphalt paving, trees, irrigation and lighting systems or similar improvements. As part of the agreement, the District is permitted to remove any of these improvements for the purpose of maintaining and/or replacing the sanitary sewer. Please note that the District is not liable for any damage to your improvements.

Keep the location of the easemen clear of debris and material, especially around manhole access points.

- **What does this mean to me?**

  1. Do not place planters or any other objects on manhole covers.
  2. Fences and gates are not to be constructed over manhole covers.
  3. No permanent structures are to be erected within the easement location.
  4. Keep the location of the easement clear of debris and material, especially around manhole access points.
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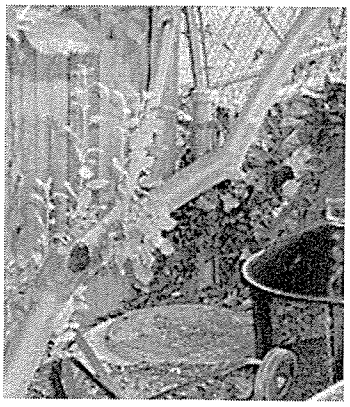


The property owner may be faced with all costs of removal and any associated damages resulting fror unauthorized structures or improvements on land subject to an easement.

- **What is an encroachment on an easement?**

  An encroachment is a physical intrusion in an area of the easement contrary to the agreement. The District may require that any unauthorized encroachments be removed at the property owner's expense. All encroachments on easements require written approval of the District by way of an Encroachment Agreement.

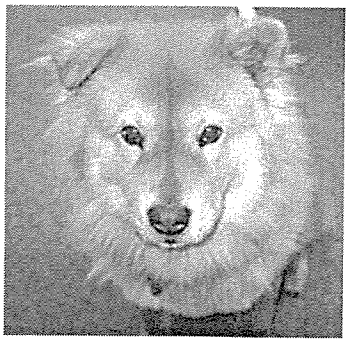
- **Are there penalties for locating structures or improvements on an easement?**

  The property owner may be faced with all costs of removal and any associated damages resulting from unauthorized structures or improvements on land subject to an easement.

- **Do you have a dog?**

  The District makes every effort to try to minimize impacts on you, however, if you own a dog this makes our work a little more challenging!

  We would appreciate if you could provide us with your name and contact number so we can make special arrangements with you regarding the care for your dog before entering your property. Please contact us at (510) 537-0757.



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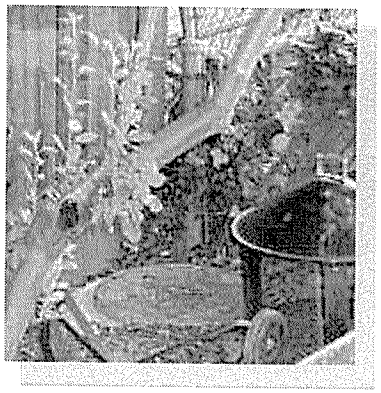

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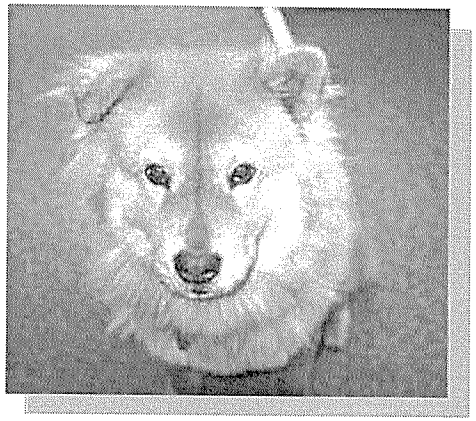

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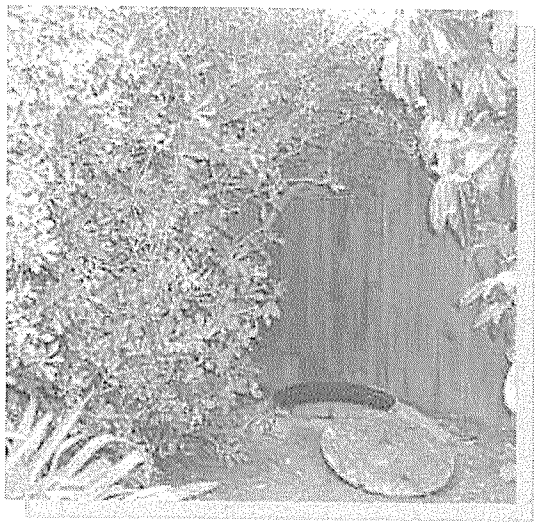
Printed on recycled paper
Created 06/21/2005

CASTRO VALLEY SANITARY DISTRICT

Easements

Sanitary Sewers on your Property



An Easy Guide to Easements

CASTRO VALLEY SANITARY DISTRICT
21040 Marshall Street, Castro Valley, CA 94546
(510) 537-0757, (510) 537-1312 fax
www.cvsan.org

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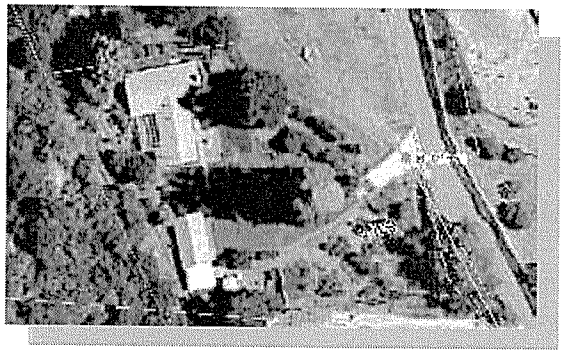

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HEHMEYER
1966 Tice Valley Blvd., #507
Walnut Creek, CA 94595
925-969-1744
carolhehmeyer@yahoo.com

RECEIVED
JAN 0 5 2009
CITY OF LAFAYETTE
PLANNING DEPT.

December 26, 2008

Lafayette City Council
Lafayette City Planning Services Division
3675 Mt. Diablo Blvd., -- Suite 210
Lafayette, CA 94549

Re: HDP47-07 RICHARD HOLT (APPLICANT), R-10 ZONING – Section 1 Appeal by Richard Holt, re UNANIMOUS denial of HDP47-07 and V17-08, for hillside development permit and single residence on Lot at Sierra Vista Way and Sessions Road
(Tract 5332, Lot 66)
APN 2332-052-019

Dear City Council:

Please place this letter in the file for the above noted case and also put a copy of it in the file with the staff report given to the Council members at the next scheduled hearing for which it is timely filed.

At the December 8, 2008 hearing on this matter, City Planner Christine Sinnette produced the attached document which is entitled "Approved Variance Applications 2000-2008."

She explained that one of the Council members had asked for a printout showing all of the variances that the City of Lafayette has previously granted so that a structure could be constructed inside an easement.

She further explained that Senior Planner Greg Wolf produced this attached printout at her request.

Ms. Sinnette stated that one of the 108 items listed on the attachment (item 76) appears to involve the grant of construction of a structure inside an easement. She cautioned, in fairness, that the entries could be inaccurate.

She was right.

Entry number 76 was that cited as proof that there is precedent for granting the siting of a structure WITHIN an easement. That entry does not in any way stand for that proposition.

In fact, the survey firmly establishes that this City has, at least within the studied time period, always assiduously honored and respected easements and has never intruded upon them in any way.

///

HDP24-05 treats a remodeling project which involved NO easement (the file has to be read for one to understand that fact). The replaced garage referred to in the notes at entry 76 was placed in NO easement at all.

On December 15 I spent about an hour and a half studying the file behind that entry. The application for the relocated garage required a variance of the front yard setback from 50 feet to 15 feet. Though the lot involved in the application was huge (219,107 square feet), it was steep, and the area designated for the relocated garage appeared to be the only place on which the relocated garage could logically be placed.

The application also involved a request to permit the required four parking spaces for the house to be located within the setback area.

These variances from the setback and in to the setback were approved on January 6, 2006.

In making the findings, the Commission noted that the existing carport (which was being replaced with a garage) was non conforming to the required front yard setback and parking requirements.

Niroop K. Srivasta and Michael Cass worked on this matter.

Michael Cass was at the front counter on December 15 when I examined this file. I asked him if he could find any easement involved in the application. He looked at the file, advised me that he

had worked on the matter, and remembered it, and that no easement whatsoever was involved in the application or the lot.

The misunderstanding about this application may have sprung from the fact that the OWNER of the property filed the application and wrote as to the relocated, replacement garage that "The garage replaces a carport which intruded on the easement as well as the setback, and also exceeded the 12' height limit."

This entry, by a layperson, was erroneous. No easement appears anywhere on the lot, much less in the area of the new garage.

However, the sheet shown at the December 8 hearing by Ms. Sinnette is instructive and helpful for another reason.

It shows that NEVER, from 2000 to 2008, has any structure ever been sited WITHIN any easement in the City of Lafayette.

Further, it shows that easements have **always been recognized and respected by this city in its siting and planning work.**

EVERY single easement shown on this survey of approved variance applications is respected. Nothing is built on any easement (presumably, some of these easements are by prescription, necessity, dedication, or other equitable means and are not deeded or recorded).

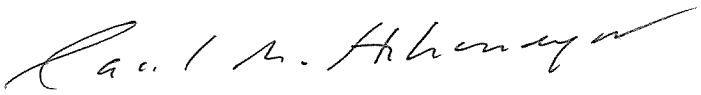
It is, parenthetically, sometimes possible for a court, acting in equity, to change an easement granted in equity. A court cannot grant a change to a certain, unambiguous, deeded recorded easement without extraordinary external factors. No such circumstances exist here.

If the City of Lafayette had ever granted the siting of any structure within an easement, that **action would have been unlawful**.

However, it has not done that, at least insofar as the survey submitted by Ms. Sinnette shows.

As I explained in a previous letter, no variance can ever be granted from a deeded, recorded easement by any city.

Yours very truly,



Carol M. Hehmeyer

Attachment: Approved Variance Applications 2000-2008

Approved Variance Applications 2000-2008

Source: Planning Database

Greg Wolff, Senior Planner • 12/08/2008

Variance to yard setback - general

Variance from secondary frontage or access easement - specific

Applications
Project Description
1. V06-02 LAWERENCE K. BREHM (APPLICANT), MATTHEW & MARIANNE BOUZA (OWNER): Request variance to reduce frontyard setback from the required 25-ft. to 15-ft. 3-in. in conjunction with request for design review approval to construct a second-story addition to the existing bedroom wing. APN 249-030-002.
2. V07-00 LORI SENIOR (APPLICANT AND OWNER), R-10: Request for a variance approval per Section 6-749 of Lafayette Municipal Code to reduce side yard from the required 10 ft. to 6.7 ft. for construction of an addition to the existing residence, located at 956 Janet Lane, APN 233-016-030.
3. V 6-00 MICHAEL O'NEILL (APPLICANT & OWNER). R-20: Request for a variance approval per Section 6-788 to reduce one side yard from the required 15ft. to 1.9ft. to construct an accessory structure, located at 3749 St. Francis Drive, AFN 245-153-004. Approval to construct a shed within the required setbacks.
4. V11-01 SEAN MURRAY, (APPLICANT & OWNER), R-20: Request a variance approval per Section 6-789 of the Lafayette Municipal Code to reduce the setback from the required 25 ft. to 22 ft. to extend a two level deck, located at 3918 North Peardale Drive. APN 248-071-016.
5. V 11-00 LAWRENCE & RANDI PINES (APPLICANTS & OWNERS), R-20: Request for a variance approval per Section 6-788 to reduce the side yard setback from the required 3 ft. to 2.9 ft., and per Section 6-790 to reduce the rear setback from the required 3 ft. to 1.2 ft. to approve an existing accessory structure located at 762 Grondine Road, APN 240-133-003. Request variance approval to reduce setbacks for an existing building.
6. DR10-02 DICK HUMPHRIES (APPLICANT), LANA McGILL (OWNER), R-40 ZONING: Request for design review approval per Section 6-276(b)(1)(C) of the Lafayette Municipal Code for construction of an addition, with which the gross floor area of the residence will exceed 6,000 square feet, located at 3666 Happy Valley Road. APN 244-160-006. (See secondary application V10-02) V10-02 DICK HUMPHRIES (APPLICANT), LANA McGILL (OWNER), R-40 ZONING: Request for variance approval from Section 6-7108 of the Lafayette Municipal Code to reduce the side yard setback from the required 20' to 9' 4", and to reduce the aggregate from the required 40' to 26' 9", located at 3666 Happy Valley Road. APN 244-160-006. (See primary application DR10-02) Project Planner: Coburn
7. V09-00 AL & ANNE WEBSTER(APPLICANTS & OWNERS), R-20: Request for variance approval to reduce the side yard from the required 15' to 4.93' per Section 6-768 to construct an addition, located at 3642 Happy Valley Road. APN 244-180--027.
8. V08-02 JENNIFER LEE (APPLICANT & OWNER), R-20 ZONING: Request for variance from Section 6-790 of the Lafayette Municipal Code to establish an 7'-0" rear yard setback, where a 15'-0" rear yard setback is required; located at 1315 Reliez Valley Road. APN 230-200-002 Project Planner: Adelson
9. V08-00 WILLIAM & MELISSA THORN (APPLICANTS & OWNERS), R-20: Request for variance approval to reduce the front yard from the required 25' to 4' per Section 6-789; to reduce the side yard from the required 20' to 7' per Section 6-788; and to construct a trellis over 6' in a required set back per Section 6-526, located at 1200 Upper Happy Valley Road. APN 246-170-016.
10. V07-03 MAUREEN BEHRENDT, BEHRENDT DESIGN (APPLICANT), WAYNE & JOAN MERRYMAN (OWNERS), R-10 ZONING: Request for variance from Sections 6-729 and 6-728 of the Lafayette Municipal Code to reduce the front setback from the required 20-ft. to 16-ft. and to reduce the required side yard setback from the required 10-ft. to 7-ft. to construct a an attached one-story, one-car garage addition to an existing single-family residence, located at 811 Topper Lane. APN 234-062-010. Project Planner: Bryant Adleson, Tel (925) 299-3219

Applications

Project Description
11. V17-01 MARC & MICHELLE BURNSTEIN (APPLICANTS & OWNERS), R-10: Request a variance approval per Section 6-730 of the Lafayette Municipal Code to reduce the rear yard from the required 15 ft. to 13 ft.-3 in.; and per Section 6-728 to reduce the side yard from the required 10 ft. to 7 ft., and the aggregate from 20 ft. to 17 ft. to construct an addition, located at 1010 Windsor Dr. APN: 185-092-015.
12. V03-00 GREG ARTHUR (APPLICANT) BRIAN HAGERTY (OWNER), R-20: Request for a variance approval per Section 6-788 to reduce the aggregate side yard from the required 15 ft. to 7 ft. 9 in. to allow the construction of a 16-ft. high deck/trellis structure located at 3314 Walnut Lane, APN 236-142-005.
13. V01-00 RICHARD & BETSY WILDENRADT (APPLICANT & OWNERS), R-10: Request for a variance approval to reduce the front yard from the required 20' to 11'-6" per Section 6-729 to construct an addition, located at 595 Antonio Court, APN 238-133-009.
14. V01-01 MIKE & MAUREEN BIRDSALL (APPLICANTS & OWNERS), R-10: Request a variance approval per Section 6-729 to reduce setback from the required 20 ft. to 16.5 ft. to construct an entryway and a bay window, located at 1036 Lindsey Court. APN 185-072-005.
15. DR68-01 KEN HERTEL (APPLICANT), LEWIS & ELIZABETH BREMER (OWNER), R-20 ZONING: Request for design review approval per Section 6-1903(a) of the Lafayette Municipal Code to construct a two-story addition on a lot less than 30,000 sq. ft., located at 3452 Solana Court. APN 239-060-012. (See secondary application V01-02) V01-02 KEN HERTEL (APPLICANT), LEWIS & ELIZABETH BREMER (OWNER), R-20 ZONING: Request for variance approval from Section 6-515 of the Lafayette Municipal Code to reduce the side yard from the required 10' to 6', to reduce the aggregate from 20' to 16.3', and to reduce the front setback from the required 15' to 12', located at 3452 Solana Court. APN 239-060-012. (See primary application DR68-01)
16. V02-00 NORBERT AND VICTORIA MEGOWAN (APPLICANTS AND OWNERS), R-10: Request for a variance approval per Section 6-729 of Lafayette Municipal Code to reduce the setback from the required 20 ft. to 11 ft. for construction of an addition, located at 640 Augustine Lane, APN 238-102-021.
17. DR74-01 KEN HERTEL (APPLICANT), ROBERT & CARLA COMBI (OWNER), R-40 ZONING: Request for design review approval per Section 6-1903(b) of the Lafayette Municipal Code to construct a two-story addition exceeding 30' in height, and per Section 6-276(b)(1)(C), construction which exceeds 6,000 sq. ft. in gross floor area, located on 1254 Panorama Drive. APN 246-100-010. (See secondary application V02-02) V02-02 KEN HERTEL (APPLICANT), ROBERT & CARLA COMBI (OWNER), R-40 ZONING: Request for variance approval from Section 6-7108 of the Lafayette Municipal Code to reduce the side yard from the required 20' to 11'-4" and to reduce the aggregate from 40' to 34'-8", located at 1254 Panorama Drive. APN 246-100-010. (See primary application DR74-01)
18. V06-03 MICHAEL & CYNTHIA WHITCHURCH (APPLICANTS & OWNERS), R-20 ZONING: Request a variance approval per Section 6-789 of the Lafayette Municipal Code to reduce the front setback from the required 25 ft. to 20 ft. to construct a new single-story addition, and a variance per Section 6-791 to allow two tandem parking spaces within the side yard, located at 933 Reliez Station Road. APN 233-191-009.
19. V3-01 JEFFREY ROGERS (APPLICANT), J. D. JUNG (OWNER), R-10: Request a variance approval per Section 6-728 to reduce the side yard from the required 10 ft. to 8.7 ft. to construct a single-story addition, located at 3969 North Peardale Drive, APN 248-072-002.
20. V04-02 BRUCE A. MASTICK (APPLICANT), JOHN & MICHELLE McCOY (OWNERS), R-10 ZONING: Request for variance from Section 6-729 of the Lafayette Municipal Code to establish a 17'-0" front yard setback, where a 20'-0" front yard setback is required; and request for variance from Section 6-728 to establish a 5'-0" side yard setback where a 10'-0" side yard setback is required; located at 800 Mariposa Road. APN 241-092-008.
21. V05-00 DANIEL AND JAN PEGAN (APPLICANTS AND OWNERS), R-20: Request for a variance approval per Section 6-788 of Lafayette Municipal Code to reduce the sideyard from the required 15 ft. to 10'-6" for construction of an addition, located at 1083 Upper Happy Valley Road, APN 247-081-004.
22. V17-02 THOMAS & KAREN MULVANEY (APPLICANTS & OWNERS), R-20 ZONING: Request for variance from Section 6-788 of the Lafayette Municipal Code to establish an 7'- 4" side yard setback, where a 15'-0" side yard setback is required; request to reduce the aggregate of the side yards to 21'-6" where 35'-0" is required; located at 4014 Tilden Lane. APN 249-010-019 Project Planner: Adleson

23. V2-01 KEN HERTEL (APPLICANT), DAVID & CAMERON KRZNARIC (OWNER), R-10: Request a variance approval per Section 6-729 of the Lafayette Municipal Code to reduce the setback from the required 20 ft. to 14.5 ft. to construct a single-story addition, located at 3173 Somerset Drive. APN 237-063-011.

24. V31-00 PETER & CLAUDIA NORTON (APPLICANTS AND OWNERS), R-10: Request for a variance per Section 6-728 of Lafayette Municipal Code to reduce the side yard from the requried 10-ft. to 3-ft. for construction of an addition, located at 1050 Manzana Place, APN 185-072-006.

25. V48-00 JEFFREY ROGERS (APPLICANT), MICHAEL & ANNE FRIEDMAN (OWNERS), R-10: Request a variance approval per Section 6-728 to reduce the side yard from the required 10 ft. to 8.83 ft.; and to reduce the aggregate side yard from the required 20 ft. to 19.33 ft. to construct a single story addition, located at 8 Middle Road, APN 251-061-008.

26. V46-00 KAREN M. BESSE (APPLICANT & OWNER), R-6: Request a variance approval per Section 6-709 to reduce the aggregate side yard from the required 15 ft. to 10.5 ft. to construct an one-story addition; and per Section 6-712 to allow one parking space within the setback, located at 3346 Moraga Boulevard, APN 233-092-017.

27. V45-00 TIM & DENISE O'KEEFE (APPLICANTS & OWNERS), R-10: Request a variance approval per Section 6-729 to reduce the setback from the required 20 ft. to 11 ft.; and per Section 6-728 to reduce the aggregate side yard from the required 15 ft. to 12.75 ft. to construct an one-story addition with parking, located at 852 Birdhaven Court, APN 234-061-022.

28. V41-00 KENNETH JOHNSON (APPLICANT & OWNER), R-10: Request for a variance approval per Section 6-730 to reduce the required rear yard from the required 15ft. To 11ft. to construct an one-story addition located at 554 Arrowhead Drive, APN 237-243-016.

29. DR46-02 JON & DANA WILSON (APPLICANTS & OWNERS), R-20 ZONING: Request for design review approval per Section 6-1903(a) of the Lafayette Municipal Code to construct a two-story addition to an existing one-story single-family residence, located at 715 Las Trampas Road. APN 234-230-006. V39-02 JON & DANA WILSON (APPLICANTS & OWNERS), R-20 ZONING: Request for variance approval from Section 6-789 of the Lafayette Municipal Code to reduce the front yard setback from the required 25 feet to 18 feet, located at 715 Las Trampas Road. APN 234-230-006.

30. V38-00 DAVID CLAYDON (APPLICANT), RICHARD & VIRGINIA VAN DRUTEN (OWNERS), R-40: Request a variance approval per Section 6-7108 to reduce the sideyard from the required 20 ft. to 5 ft. to construct an addition located, at 3361'A' McGraw Lane. APN 230-130-018.

31. Request approval to reduce the front setback.

32. HDP02-02 GERALD & TERESA GALER (APPLICANT & OWNER), R-6 ZONING: Request for Hillside Development Permit per Section 6-2015 of the Lafayette Municipal Code to construct one-story additions totaling 2,17 sq.ft. to an existing one-story, single-family residence in the Hillside Overlay District, located at 964 Yorkshire Court. APN 234-280-035. (See secondary application V34-02) V34-02 GERALD & TERESA GALER (APPLICANT & OWNER), R-6 ZONING: Request for variance from Section 6-710 of the Lafayette Municipal Code to reduce the front yard setback from the required 20' to 16', located at 964 Yorkshire Court. APN 234-280-035. (See primary application HDP02-02) Project Planner: Coburn (925) 299-3202

33. V34-01 DICK HUMPHRIES (APPLICANT), LANA & STEPHEN McGILL (OWNERS), R-40: Request for variance from Section 6-7108 of the Lafayette Municipal Code to establish a 15'-0" side yard setback where 20'-0" is required; located at 3666 Happy Valley Rd. APN: 244-160-006

34. V32-01 TOM & JENNIFER FELLNER (APPLICANTS & OWNERS), ZONE R-40: Request for variance from Section 6-7109 of the Lafayette Municipal Code to establish a 5'-0" front setback, adjacent to a 18'-wide access easement, where a 25'-0" yard set back is required; located at 3790 Happy Valley Road. APN 245-020-003.

35. V17-00 JOHN & TERRI HANHAUSER (APPLICANT & OWNERS), R-20: Request a variance approval per Section 6-789 to reduce the secondary setback from the required 20 ft. to 1.5 ft. to construct a deck, and per Section 6-791 to allow five parking stalls within the primary and secondary setback, located at 1303 Summit Road, APN 175-030-021.

36. V18-02 SERGE & CATHLEEN TERENTIEFF (APPLICANTS & OWNERS), R-6 ZONING: Request for variance from Section 6-709 of the Lafayette Municipal Code to establish an aggregate side yard of 8'-0" where 15'-0" is required; located at 3495 Moraga Blvd. APN 234-021-003

37. V19-00 AUSTIN & DIANE HURST (APPLICANTS & OWNERS), R-20: Request for a variance per Sec. 6-788 of Lafayette Municipal Code to reduce the required side yard setback from 20' to 15.5' and the aggregate from 35' to 28.5' to construct an addition, located at 716 St. Marys Road. APN 236-070-022.

38. V20-00 BRIAN & ANNE BATES (APPLICANTS & OWNERS), R-10: Request for a variance per Sec. 6-728 of Lafayette Municipal Code to reduce the required side yard setback from 10' to 7.5 to construct an addition, located at 3152 Stanley Blvd.;,APN 175-052-004.

39. V23-00 RICHARD OSMUNDSEN (APPLICANT) AND KURT PIPER (OWNER), R-10: Request for a variance approval per Section 6-728 of Lafayette Municipal Code to reduce the sideyard from the required 10-ft. to 7-ft. for construction of an addition, located at 881 Birdhaven Ct., APN 234-061-009

40. V24-00 LEON PYLE & CATHY DeFOREST (APPLICANTS), THE PYLE-DEFOREST TRUST (OWNER), R-20: Request for a variance approval per Section 6-788 to reduce the required aggregate sideyards from 35 ft. to 30ft. 6inches for construction of a playroom and new garage, located at 3559 South Silver Springs Road, APN 240-111-006.

41. V32-00 PHILLIP & NANCY CALDERON (APPLICANTS & OWNERS), R-6: Request a variance approval per Section 6-709 of the Lafayette Municipal Code to reduce the required aggregate side yard from the required 15 ft. to 11.70 ft. to construct a single-story addition, located at 3360 Victoria Avenue. APN 233-091-030.

42. V25-00 JOSE AND PATRICIA KUAN (OWNERS AND APPLICANTS), R-20; Request for a variance per Section 6-789 of Lafayette Municipal Code to reduce the setback from the required 25 ft to 8 ft. for construction an addition to the existing one-story residence, located at 1514 El Sombro Court, APN 230-050-011.

43. V31-02 JOHN C. WALKER (APPLICANT), RICHARD & LISA COHEN (OWNERS), R-40 ZONING: Request for variance from Section 6-7109 of the Lafayette Municipal Code, to reduce the front setback from the required 25 ft. to 21 ft. for the construction of a garage, and request for variance from Section 6-7111, to allow parking within the required setback, located at 3357 Hermosa Way. APN 167-230-008

44. V26-00 RICHARD S. & KATHLEEN MARSHALL (APPLICANTS & OWNERS), R-20: Request for a variance per Section 6-789 of Lafayette Municipal to reduce the required secondary front yard setback from 20-ft. to 5-ft. 9-in. to construct an addition, located at 1033 Sunnybrook Drive, APN 284-022-001

45. V27-00 WALTER AND JEWEL KIVETT (APPLICANTS AND OWNERS), R-15: Request for a variance approval per Section 6-769 of Lafayette Municipal Code to reduce the secondary setback from the required 15 ft. to approximately 5 ft. for an expansion of the existing garage, located at 1015 Regio Court, APN 233-211-018. Meeting date: Public hearing with the Zoning Administrator on August 8, 2000 at 4:00 p.m. in the City Offices.

46. V28-00 WILBERT J. WEISKIRCH (APPLICANT AND OWNER), R-10: Request for a variance approval per Section 6-728 of the Lafayette Municipal Code to reduce the sideyard from the required 10 ft to 7 ft and aggregate sideyards from the required 20 ft to 13 ft. for construction of an addition to the existing residence, located at 1038 Lindsey Court, APN 185-072-006.

47. V28-01 ELMER SCHIDELER (APPLICANT & OWNER), ZONE R-10: Request for variance from Section 6-728 of the Lafayette Municipal Code to establish a 6'-6" side yard setback where 10'-0" is required; located at 1048 Lindsey Court. APN: 185-072-011.

48. V29-00 DAVID C. PINKHAM (APPLICANT & OWNER) R-10, Request a variance approval per Section 6-729 to reduce the front setback from the required 20 ft. to 15.5 ft. to construct an addition located at 523 Dawkins Drive, APN 237-131-010. Request approval to reduce the front setback.

49. V50-00 DEBRA GAJER & JIM Mc TARAGHAN (APPLICANTS & OWNERS), R-6: Request for a variance approval per Section 6-710 to reduce the setback from the required 20 ft. to 14 ft. to construct a single-story addition, located at 934 Diablo Drive. APN 234-170-010.

50. V21-00 BROVELLI ARCHITECTURE AND CONSTRUCTION (APPLICANT), LLOYD AND MARY TORCHIO (OWNERS), R-20: Request for a variance approval per Section 6-788 of Lafayette Municipal Code to reduce the sideyard from the required 15 ft. to 10 ft and to reduce the aggregrate sideyards from the required 35 ft. to 23 ft. for construction of an addition, located at 1164 Upper Happy Valley Road, APN 246-152-006.

51. DR17-06 PETER GOLZE & BAYFRONT ARCHITECTURE (APPLICANTS), CHRIS & ELENA TOOHEY (OWNERS), R-20 ZONING: Request for design review approval pursuant to Section 6-1903 of the Lafayette Municipal Code to construct 1,728 sq. ft. one-story and two-story additions to an existing two-story single-family residence located at 948 Stow Lane. APN 233-192-014. V05-06 PETER GOLZE & BAYFRONT ARCHITECTURE (APPLICANTS), CHRIS & ELENA TOOHEY (OWNERS), R-20 ZONING: Request for a variance from Section 6-793 of the Lafayette Municipal Code to reduce the aggregate side yard setback from the required 35-ft. to 34-feet, 3-inches 2in. and 14ft. 6in. to construct 1,728 sq. ft. one-story and two-story additions to an existing two-story single-family residence located at 948 Stow Lane. APN 233-192-014.

52. V26-01 David Claydon (Applicant) Sam & Chari Plough (Owners) Zone R-6: Request for variance from Section 6-791 of the Lafayette Municipal Code to establish a 3'-0 side yard setback where, a 5'-0 setback is required,. As well as a 10'-0 front yard setback, where a 20'- 0 set back is required, located at 3344 Moraga Blvd., APN: 233-092-016.

53. V27-03 SCHELL & MARTIN (APPLICANT) JON & DANA WILSON (OWNERS); R-20 ZONING: Request for variance approval from Section 6-789 of the Lafayette Municipal Code to reduce the side yard setback from the required 25 feet to 18 feet, located at 715 Las Trampas Road. APN 234-230-006.

54. V18-06 RITCH & JUDY VOSS (APPLICANTS & OWNERS), R-6 ZONING: Request for a variance from Section 6-709 of the Lafayette Municipal Code to reduce the required minimum side yard setback from 5'-0" to 0'-0" to enclose an existing 376 sq. ft. carport, and raise the maximum roof ridge from a height of 12'-0" to 13'-8", located at 1023 Dyer Drive. APN 233-080-025.

55. V15-05 FRANK DODD (APPLICANT) LOUIS & RUTH BARRARE (OWNERS) R-20 ZONING: Request for a variance from Section 6-788 of the Lafayette Municipal Code to reduce the side yard setback from required 10-ft. to 5-ft. to accommodate a lot line revision corresponding to an existing retaining wall and fence between properties located at 3289 and 3293 Sweet Drive. APN 236-151-011 & 236-121-001.

56. V33-01 ROBERT & GWEN CARDA (APPLICANTS & OWNERS), ZONE R-10: Request for variance from Section 6-526(a)(2) of the Lafayette Municipal Code to establish a 8'-0" high fence along the back of the property; located at 2920 Windtree Court. APN 185-440-002.

57. V50-02 GAIL HUTTON (APPLICANT &OWNER), R-10 ZONING: Request for variance approval per Section 6-728 of the Lafayette Municipal Code to reduce the side yard setback from the required 10-ft. to 8-ft. to construct a master bathroom addition, located at 646 Glenside Drive. APN 238-101-004.

58. V13-02 JOHN & LAURA COX (APPLICANTS & OWNERS), R-10 ZONING: Request for variance from Section 6-728 of the Lafayette Municipal Code to establish an 8'-6" side yard setback, where a 10'-0" side yard setback is required; and request for variance from Section 6-729 to establish a 14'-0" front yard setback, where 20'-0" is required; and request for variance from Section 6-731 to establish two parking spaces within the front yard setback, located at 3319 Helen Lane. APN 237-134-010

59. Variance for front yard and side yard setback. V31-01 BILL & BARBARA PARKER (APPLICANTS & OWNERS), ZONE R-10: Request for variance from Section 6-7109 of the Lafayette Municipal Code to establish a 5'-0" front setback, adjacent to a 18'-wide access easement, where a 25'-0" yard set back is required; located at 3790 Happy Valley Road. APN 245-020-003.

60. V10-06 STEVE MCKEE (APPLICANT), JIM FINEGOLD (OWNER) R-20 ZONING: Request for a variance from Section 6-789 of the Lafayette Municipal Code to reduce the front yard setback from the required 25-ft. to 16-ft. to reconstruct a one-story garage within an existing building footprint on a property located at 771 Las Trampas Road. (Project was revised to reduce the ridge height below 17 ft.). APN 234-200-004.

61. HDP51-06 MIKE MUSSANO (APPLICANT), CHET & MONICA CHAPPELL (OWNERS), R-6 ZONING: Request for: (1) Hillside Development Permit pursuant to Section 6-2015 of the Lafayette Municipal Code (LMC) and (2) Design Review pursuant to Section 6-1903 LMC to construct a 515 sq. ft. one-story infill addition with an average building height of 21'6" to an existing 1,967 sq. ft. one-story single-family residence, within the Hillside Overlay District, located at 912 Hawthorne Drive. APN 234-280-027. V08-06 MIKE MUSSANO (APPLICANT), CHET & MONICA CHAPPELL (OWNERS), R-6 ZONING: Request for Variance approval from Sections 6-709 and 6-710 of the Lafayette Municipal Code to reduce the front yard setback from the required 20' to 12'1", to reduce the secondary frontage from the required 15'0" to 13'3" inches, and to reduce the side yard setback from the required 5'0" to 4'7", located at 912 Hawthorne Drive. APN 234-280-027.

62. DR09-02 DAVID CLAYDON (APPLICANT), GRAHAM & CAROLYN WISEMAN (OWNERS), R-10 ZONING: Request for design review approval per Section 6-1903 (a) of the Lafayette Municipal Code to construct a second-story addition to an existing one-story, single-family residence, located at 1481 Sunset Loop. APN 185-342-008. V09-02 DAVID CLAYDON (APPLICANT), GRAHAM & CAROLYN WISEMAN (OWNERS), R-10 ZONING: Request a variance approval per Sections 6-729 & 6-728 of the Lafayette Municipal Code to reduce the front setback from the required 20 ft. to 15 ft., and to reduce the side yard from the required 10 ft. to 6.5 ft. to construct an addition, located at 1481 Sunset Loop. APN 185-342-008.

63. HDP37-06 GENE & DUANE BELL (APPLICANTS & OWNERS), R-20 ZONING: Request for: (1) Hillside Development Permit pursuant to Section 6-2015 of the Lafayette Municipal Code (LMC) to construct a 543 sq. ft. one-story addition to an existing one-story single-family residence within the Hillside Overlay District, located at 862 Las Trampas Rd. APN 234-190-013. V09-06 GENE & DUANE BELL (APPLICANTS & OWNERS), R-20 ZONING: Request for a variance from Section 6-788 of the Lafayette Municipal Code to reduce the aggregate side yard setback from the required 35-ft. to 32-ft. to construct a 543 sq. ft. one-story addition to an existing one-story single-family residence within the Hillside Overlay District, located at 862 Las Trampas Rd. APN 234-190-013.

64. Appeal by Applicant of the Planning Commission's conditional approval of: DR23-06 STERLING ALBERT (APPLICANT & OWNER), R-10 ZONING: Request for: (1) retroactive Design Review approval pursuant to Section 6-1903 of the Lafayette Municipal Code (LMC) to demolish an existing garage and construct a new 870 sq. ft. two-story accessory building with a maximum ridge height of 19'3", located at 1845 Reliez Valley Road. APN 167-040-041. Appeal by Applicant of the Planning Commission's conditional approval of: V11-06 STERLING ALBERT (APPLICANT & OWNER), R-10 ZONING: Request for a retroactive Variance pursuant to: (1) Section 6-728 of the Lafayette Municipal Code to reduce the minimum side yard setback from 10-feet to 4-feet to construct a new 870 sq. ft. two-story accessory building with a maximum ridge height of 19'3", located at 1845 Reliez Valley Road. APN 167-040-041.

65. V11-04 ROBERT & ANN CORMACK (APPLICANTS & OWNERS), R-20 ZONING: Request for variance approval pursuant to section 6-526 of the Lafayette Municipal Code to reduce the side yard setback from the required 15 ft. minimum setback to 5 ft., reduce the aggregate side setback from 35 ft. to 20 ft. and to allow an accessory structure to exceed 6' within the side setback to construct a two-car carport, located at 3393 Angelo Court. APN 230-060-006

66. V12-07 LOVING & CAMPOS ARCHITECTS, INC. (APPLICANT), TEMPLE ISAIAH OF CCC (OWNER), R-40 ZONING AND HOD: Request for a variance pursuant to section 6-7113, LMC, to allow parking in the side yard setbacks and a retaining wall higher than six feet in the rear yard setback.

67. V11-07 CARINE HOARAU & JOHN FEUERSTEIN (APPLICANTS & PROPERTY OWNERS), R-10 ZONING: Request for a Variance pursuant to Section 6-728 of the Lafayette Municipal Code to reduce the side yard setback from 10'-0" to 0'-0" to convert an existing 820 sq. ft. carport into a garage with an maximum building height of ~14'-6" to an existing 2,126 sq. ft. one-story single-family residence, located at 3164 Rohrer Drive. APN 237-460-001.

68. V13-06 CHARLES SILVERMAN (APPLICANT & OWNER), R-15 ZONING: Request for: a Variance pursuant to Section 6-768 of the Lafayette Municipal Code to reduce the required aggregate side yard setback from 25'0" to 21'4" to construct a 90 sq. ft. one-story addition with a maximum ridge height of 15-feet, located at 852 Broadmoor Court. APN 234-121-029.

69. V01-05 MARY BRODY (APPLICANT), CAROLYN & KEVIN DAUGHTON (OWNERS), R-6 ZONING: Request for a variance from Section 6-711 of the Lafayette Municipal Code to reduce the rear setback from the required 15-ft. to 8-ft. for the proposed second-story of a detached accessory building, located at 3505 Moraga Blvd. APN 234-010-008.

70. V01-07 STEVEN & ANN CLARK (APPLICANTS & OWNERS), R-10 ZONING: Request for a Variance pursuant to: (1) Section 6-729 of the Lafayette Municipal Code (LMC) to reduce the side yard setback from 10 feet to 5 feet to construct a 22 to their existing garage. The project includes single story additions to the existing residence located at 633 Burton Drive APN 237-021-001.

71. DR05-08 & V02-08 DAVID CLAYDON (APPLICANT), ERIC SANDBERG (OWNER) R-6 ZONING: Request for (1) Design Review approval pursuant to Section 6-1903 of the Lafayette Municipal Code ("LMC") and (2) a Variance pursuant to Section 6-709 & 6-710 LMC to construct a 1,577 sq. ft. one-story, two-story, and second-story additions with a maximum building height of 24'-0" to an existing 2,027 sq. ft. one-story single-family residence, requiring a reduction to the required side yard from 5'-0" to 3'-0" and the required front yard from 20'-0" to 16'-0", located at 1012 Dyer Drive, APN 233-080-033.

72. DR36-05 & V04-06 RON & SUE RUSAY (APPLICANTS & OWNERS), R-10 ZONING: Request for design review approval per Section 6-1903 of the Lafayette Municipal Code to construct a two-story addition exceeding 17-feet in height to an existing one-story single-family residence, located at 1030 Leland Drive. APN 185-051-016. V04-06 Ron & Sue Rusay (APPLICANTS & OWNERS), R-10 ZONING: Request for a variance from Section 6-788 of the Lafayette Municipal Code to reduce the side yard setback from the required 10-ft. to 7-ft. 1-in. to construct a two-story addition exceeding 17-feet in height to an existing one-story single-family residence, located at 1030 Leland Drive. APN 185-051-016.

73. V05-03 SCOTT SULLIVAN, ARCHITECT (APPLICANT), TYLER & PAT HUNT (OWNERS), R-20 ZONING: Request for variance from Section 6-788 of the Lafayette Municipal Code to reduce the side yard setback from the required 15-ft. to 14-ft. 2-in. to construct a master bedroom addition, located at 3592 Powell Drive. APN 240-100-005.

74. V05-05 DAVID GERSON (APPLICANT & OWNER), R-20 ZONING: Request for a variance from Section 6-789 of the Lafayette Municipal Code to reduce the front yard setback from the required 20 ft. to 15 ft. to construct a one-story addition to an existing single-family residence, located at 3 Greenvalley Drive. APN 230-250-007.

75. HDP04-08, V05-08, & L01-08 WILLIAM F. HOLLAND (APPLICANT), JOHN & HEATHER WINTHER (OWNERS) R-40 ZONING: Request for: (1) Hillside Development Permit pursuant to Section 6-2015 of the Lafayette Municipal Code ("LMC"), (2) Design Review approval pursuant to Sections 6-1903 & 6-271(c)(4) LMC, (3) Grading Permit pursuant to Chapter 3-7 LMC, (4) Variance from Section 6-7108 LMC, (5) an Exception from Section 6-574(b) LMC, and (6) Land Use Permit pursuant to Section 6-572 LMC to construct a recreation court within the required setbacks and to construct 3,116 sq. ft. one-story, two-story, and second-story additions with an attic with a maximum ridge height of 34'-6" to an existing 4,184 sq. ft. two-story single-family residence with an existing maximum building height of 23'-7", requiring a reduction of the required 25'-0" front yard setback to 9'-6" and requiring grading 606 cubic yards (303 cubic yards of cut and fill) of soil, within the Hillside Overlay District, located at 3830 Happy Valley Road, APN 246-090-012.

76. HDP24-05 DAVE ROBB (APPLICANT & OWNER), LR-10 ZONING: Request for Hillside Development per section 6-2015 of the Lafayette Municipal Code to demolish an existing detached carport and to construct a new two three-car detached garage, located at 3480 Shangri La Rd. APN 167-170-003. V06-05 DAVE ROBB (APPLICANT & OWNER), LR-10 ZONING: Request for a Variance (1) from Section 6-7210 of the Lafayette Municipal Code (LMC) to reduce the front yard setback from 50 ft. to 11 ft. 4 in. 15 feet for the construction of a new detached two three-car garage to replace the existing carport within the access easement, and (2) from Section 6-7211 LMC to permit the required four parking spaces to be located within the setback area, located at 3480 Shangri La Rd. APN 167-170-003.

77. DR15-04 ROBERT & JULIE PANCOAST (APPLICANTS & OWNERS), R-10 ZONING: Request for design review approval per Section 6-1905 of the Lafayette Municipal Code to construct a 28-ft. high, two-story addition to an existing single-story family residence, located at 3257 Wooded Creek Lane. APN 177-010-031. V17-04 ROBERT & JULIE PANCOAST (APPLICANTS & OWNERS), R-10 ZONING: Request a variance per Section 6-730 of the Lafayette Municipal Code to reduce the rear yard setback from the required 15-ft. to 13-ft. to allow a portion of the proposed single-story addition in rear yard in conjunction with the proposed project, located at 3257 Wooded Creek Lane. APN 177-010-031.

78. DR21-06 WILLIAM MARQUAND, AIA (APPLICANT), ED & CHRISTIE JOE (OWNERS), R-20 ZONING: Request for: (1) Design Review approval pursuant to Section 6-1903 of the Lafayette Municipal Code (LMC) and (2) Category II Tree Permit pursuant to Section 6-1707 LMC to construct new 1,812 sq. ft. two-story residence and 660 sq. ft. garage with a maximum ridge height of 24'-7", requiring the removal of 13" black walnut, 16 ½" black walnut, and 10" coast live oak, and to convert an existing 785 sq. ft. one-story residence into a second unit (reduce gross floor area from 785 sq. ft. to 726 sq. ft.), located at 909 Irene Lane. APN 185-170-003. V06-06 WILLIAM MARQUAND, AIA (APPLICANT), ED & CHRISTIE JOE (OWNERS), R-20 ZONING: Request for a Variance pursuant to: (1) Section 6-789 of the Lafayette Municipal Code to reduce the required front yard setback from 25'-0" to ~20'-0" to construct a covered entrance wall, which is greater than 6-feet in height, and (2) Section 6-563(j and k) LMC to permit the required parking space for the second unit within the required setback and to permit entrance to primary unit on same side as entrance to secondary unit, located at 909 Irene Lane. APN 185-170-003.

79. V14-07 SUE THOMAS-D'ARCY (APPLICANT), RICHARD THOMAS (OWNER) R-10 ZONING: Request for: (1) Variance from Section 6-728 of the Lafayette Municipal Code to increase the height of the existing residence within the required side yard and aggregate side yard setback from 12'-0" to 16'-0" (existing side yard setback is 6'-8" where 10'-0" is required; existing aggregate side yard setback is 16'-8" where 20'-0" is required). Proposed development also entails a 644 sq. ft. one-story addition to an existing 3,148 sq. ft. one-story single-family residence, located at 479 Peacock Blvd.

80. V08-01 GERALD BERCHTOLD, (APPLICANT & OWNER), R-20: Request a variance approval per Section 6-789 to reduce the setback from the required 25 ft. to 12 ft., and per Section 6-788 to reduce the side yard from the required 15 ft. to 10 ft. to construct a detached single-story garage, located at 760 Tanglewood Lane. APN: 241-230-036.

81. V15-08 DANIEL WINTERICH (APPLICANT), BRAD & ANDREA HILSABECK (OWNERS), R-20 ZONING: Request for a variance from Section 6-789 of the Lafayette Municipal Code to reduce the front yard setback from the required 25' to 19'-3" and to reduce the secondary front yard setback from the required 20' to 17'-11" in order to construct 300 square feet of one story additions to an existing one story residence and enclose an existing carport, located within the Hillside Overlay District at 29 Silverwood Drive. APN 251-050-011.

82. DR46-06 JEFF HUTSON (APPLICANT & OWNER), R-10 ZONING: Request for Design Review approval pursuant to Section 6-1903 of the Lafayette Municipal Code to construct a 458 sq. ft. second-story addition with a maximum building height of 28'-1" to an existing one-story single-family residence. V25-06 JEFF HUTSON (APPLICANT & OWNER), R-10 ZONING: Request for a Variance pursuant to Section 6-7190 LMC to reduce the side setback from 10'-0" to 5'-6" to construct a second-story addition to an existing one-story single-family residence, located at 1226 Barott Road. APN 175-070-010.

83. DR27-03 JEFF WOODS, BLACK MOUNTAIN DEVELOPMENT (APPLICANT), ARTHUR BLOEDORN (OWNER), R-20 ZONING: Request for design review approval pursuant to condition D1 of subdivision TR8124, which created the lot, and Section 6-275 of the Lafayette Municipal Code, to construct a new, one-story, 4,100 +/- sq.ft., single-family residence on a 26,860 sq.ft. vacant lot, located at 15 Candlelight Lane (Lot #4). APN 230-180-025. V26-03 JEFF WOODS, BLACK MOUNTAIN DEVELOPMENT (APPLICANT), ARTHUR BLOEDORN (OWNER), R-20 ZONING: Request for variance from Section 6-789 of the Lafayette Municipal Code, to reduce the front yard setback from the required 25-ft. to 15-ft. to construct a new, one-story, 4,100 +/- sq.ft., single-family residence on a 26,860 sq.ft. vacant lot, located at 15 Candlelight Lane (Lot #4). APN 230-180-025.

84. V27-04 KATHERINE KOCH & (APPLICANTS& OWNER), R-10 ZONING: Request for variance approval pursuant to section 6-728 of the Lafayette Municipal Code to reduce the minimum side yard setback from the required 10 to 8 ft. setback and to reduce the required front setback from 20 ft. to 14 ft. 8 inches to replace an existing carport with a three-car garage, located at 3540 O'Connor Drive. APN 241-200-045

85. HDP38-07 & V27-07 FRANCIS DODD (APPLICANT & OWNER) R-20 ZONING: Request for: (1) Hillside Development Permit pursuant to Section 6-2061 of the Lafayette Municipal Code ("LMC"), (2) Design Review approval pursuant to Section 6-1903 LMC, (3) Grading Permit pursuant to Chapter 3-7 LMC, and (4) Variance pursuant to Section 6-789 LMC to reduce the front yard setback from 25'-0" to 17'-10" in order to construct a 368 sq. ft. one-story addition and a 556 sq. ft. second-story addition to an existing 1,732 sq. ft. single-family residence with an average building height of 29'-9", and convert an existing 553 sq. ft. basement into living space within the Hillside Overlay District, located at 3290 Sweet Drive, APN 236-122-001.

86. V28-04 MARK & RENEE EMERSON (APPLICANTS & OWNERS), R-10 ZONING DISTRICT: Request for variance from Section 6-728 of the Lafayette Municipal Code to reduce the eastern side yard setback from the required 10-ft. to 8.58-ft. for the construction of a 14.5-ft. high one-story addition, located at 3309 Betty Lane. APN 237-142-010.

87. V24-04 NATALIA OKS (APPLICANT & OWNER), R-10 ZONING: Request for a retroactive variance from Section 6-728 of the Lafayette Municipal Code to reduce the side yard setback from the required 10-ft. to 8-ft. 8-in. for a single-story office addition built without permits, located at 691 Glenside Drive.

88. V32-02 MARK & MALGORZATA JARRETT (APPLICANTS & OWNERS), R-40 ZONING: Request for variance from Section 6-7108 of the Lafayette Municipal Code to reduce the required sideyard setback from 20-ft. to 12-ft. 5-in. and to reduce the required aggregate sideyard setback from 40-ft. to 27-ft. 7-in., to construct a two-story addition to an existing two-story single-family residence, located at 10 Folin Lane, APN 169-340-010.

89. HDP89-04 J. ALLEN SAYLES (APPLICANT), VIRGINIA SMITH (OWNER) R-20 ZONING DISTRICT: Request for: (1) Hillside Development Permit pursuant to Section 6-2015 of the Lafayette Municipal Code (LMC); (2) Request for exemption to permit development within Class II Ridgeline Setback pursuant to Section 6-2065 (b) (2), LMC; and (3) Design Review approval pursuant to Sections 6-1903, LMC, to construct a one-story and second-story additions to a two-story single-family residence within the Hillside Overlay District, located at 672 Doreen Way. APN 239-132-010. V34-04 J. ALLEN SAYLES (APPLICANT), VIRGINIA SMITH (OWNER) R-20 ZONING DISTRICT: Request for (1) a variance from Section 6-789 of the Lafayette Municipal Code (LMC) to reduce the front yard setback from the required 25-ft. to 12-ft. to allow the construction of a one-story addition; and (2) a variance from Section 6-788 (LMC) to reduce the side yard setback from required 15-ft. to 12.75-ft. and to reduce the aggregate side yard from the required 35-ft. to 32.75-ft. in conjunction with the one-story and two-story additions within the Hillside Overlay District, located at 672 Doreen Way. APN 239-132-010.

90. HDP69-04 TIM WARD, WARD YOUNG ARCHITECTURE (APPLICANT), MIKE & SHEILA BRADBURN (OWNERS), LR-10 ZONING: Request for (1) Hillside development permit pursuant to Sections 6-2015 of the Lafayette Municipal Code (LMC); (2) Design Review approval pursuant to Section 6-1903 (LMC); and (3) Grading Permit to grade roughly 850 cubic yards pursuant to Chapter 3-7 (LMC) to construct a new 4,300 3,700 sq.ft. two-story single family residence located at 8 Hawks Hill Court. APN 167-060-007. V35-04 TIM WARD, WARD YOUNG ARCHITECTURE (APPLICANT), MIKE & SHEILA BRADBURN (OWNERS), LR-10 ZONING: Request for variance from section 6-7210 to reduce the side yard setback from the required 50-ft. to 8-ft. to construct a new 4,300 3,700 sq.ft. two-story single family residence located at 8 Hawks Hill Court. APN 167-060-007.

91. V36-02 STANLEY NIELSEN (APPLICANT), MICHAEL & MARY OUSLEY (OWNERS), R-20 ZONING: Request for variance from Section 6-789 of the Lafayette Municipal Code to reduce the front setback from the required 25'-0" to 23'-6" to allow construction of a new garage, located at 3512 South Silver Springs Road. APN 240-122-001. Project Planner: Greg Wolff, Tel. (925) 299-3204

92. V47-02 J. ALLEN SAYLES ARCHITECTS (APPLICANT), RICHARD AND RENEE NELSON (OWNERS), R-20 ZONING: Request for variances from Section 6-789 (LMC) to reduce the Sweet Drive sideyard from 20 feet to 11 feet and from Section 6-791 to allow one required parking space to encroach into the Sweet Drive sideyard.

93. V49-00 LEONARD & GWEN BERTOLAMI (APPLICANTS & OWNERS), R-6: Request for a variance approval per Section 6-710 to reduce the primary setback from the required 20 ft. to 15.5 ft., and the secondary setback from the required 15 ft. to 4 ft.; and per Section 6-711 to reduce the required rear yard from the required 15 ft. to 12 ft., to construct a one-story addition; and per Section 6-712 to have portions of the two required parking stalls located within the secondary setback; and per Section 6-517 to modify an existing non-conforming accessory structure to occupy more than 30% of the required rear yard and to be 3-ft. 1-in from the rear property line; and per Section 6-553 to make alterations to this non-conforming accessory structure, located at 1000 Walnut Drive APN 233-072-009.

94. V29-06 PETER GOLZE OF BAYFRONT ARCHITECTURE (APPLICANT), GARY HUCKABAY & KATHY SCHOLFIELD (OWNERS), R-10 ZONING: Request for a variance from Section 6-730 LMC to reduce the minimum rear yard setback for an accessory structure from 3' to 2'- 6" and a variance from Section 6-728 of the LMC to reduce the minimum side yard setback from the required 10' to approximately 2" (the existing accessory building is set back approximately 3'-2" from the access easement) to construct a one-story addition located in the Hillside Overlay District at 3162 Old Tunnel Rd. APN 185-030-007.

95. DR13-07 & V15-07 ERIC & STEPHANIE STEPHAN (APPLICANTS & OWNERS) R-10 ZONING: Request for: (1) Design Review approval pursuant to Section 6-1903 of the Lafayette Municipal Code (LMC) for the demolition of an existing ~402 sq. ft. one-story garage and construction of a 1,060 sq. ft. one-story and two-story addition (including a new garage) with a maximum building height of 24'-0" to an existing one-story single-family residence; and (2) Variance from Section 6-728 LMC to reduce the side yard setback from the required 10'-0" to 5'-6", to reduce the aggregate side yard setback from 20'-0" to 13'-6", and to permit the required parking spaces within the side yard setback, located at 3180 Rohrer Drive, APN 237-191-004.

96. V01-04 SCOTT SULLIVAN ARCHITECT (APPLICANT), COLIN & VALERIE KEELY (OWNERS), R-20 ZONING: Request for a variance from Sections 6-788 & 6-791 of the Lafayette Municipal Code to reduce the aggregate side yard from the required 35-ft. to 30.7-ft. and to allow one parking stall within the required side yard setback in conjunction with the proposed construction of an attached 14-ft. high, two-car garage, located at 3551 South Silver Springs Road. APN 240-111-010.

97. V18-04 KELLY & NED WOOD (APPLICANTS & OWNERS), R-6 ZONING: Request for variance from section 6-709 of the Lafayette Municipal Code to reduce the aggregate of the side yard setbacks from the required 15-ft. to 12.5-ft. to construct a garage and room addition at 3343 Moraga Boulevard.

98. V18-07 LLOYD. J. TORCHIO (APPLICANT & OWNER), R-20 ZONING: Request for a retro-active variance from Section 6-788 of the Lafayette Municipal Code to reduce the required 35-ft. aggregate side yard setback to 28-ft. to construct a ~200 sq. ft. one-story addition, located at 1164 Upper Happy Valley Road, APN 246-152-006.

99. V18-08 LOUIE & NELLIE ENRIQUEZ (APPLICANTS & OWNERS), R-6 ZONING: Request for a variance from Section 6-709 of the Lafayette Municipal Code to reduce the side yard setback from the required 5' minimum to 4'-11" and the aggregate side yard setback from the required 15' minimum to 10'-10" in order to construct a 543 sq.ft. addition at the rear of the house, located at 940 Mountain View Drive, APN 243-083-002.

100. V25-04 ELIZABETH & MICHAEL OLSON, (APPLICANTS & OWNERS); R-20 ZONING: Request for variance from Section 6-788 of the Lafayette Municipal Code to reduce the side yard setback from the required 15-ft. to 11-ft. to construct a single story addition to an existing one story single-family residence, located at 3552 Silver Springs Road. APN 239-040-006.

101. V15-00 WILLIAM & CAROL DIBBERN (APPLICANTS & OWNERS), R-10 ZONING: Request for a variance approval per Section 6-728 to reduce one side yard setback from the required 10 ft. to 5 ft.-8 in. to construct an addition located at 3231 Camino Colorados, APN 237- 182- 008.

102. DR17-07 & V19-07 NATALIE LANGDON-GIONET (APPLICANT), ERIC FONSTEIN & SALLY FLEMING (OWNERS), R-10 ZONING: Request for: (1) Design Review approval pursuant to Sections 6-1903 of the Lafayette Municipal Code (LMC) and (2) Variance from Section 6-728 LMC to reduce the side-yard setback from the required 10'-0" to 5'-7" for the construction of a 425 sq. ft. second-story addition with a ridge height of 22'-7 ½" to an existing 1,540 sq. ft. one-story single-family residence with an existing maximum building height of ~ 15'-8", located at 3160 Stanley Boulevard, APN 175-052-006.

103. V20-04 PETER & KELLY HESS (APPLICANTS & OWNERS), R-40 ZONING: Request for a variance from Section 6-7108 of the Lafayette Municipal Code to reduce the side yard from the required 20-ft. to 12.5-ft. and reduce the aggregate side yard from the required 40-ft. to 32.5-ft. to construct an attached single-story addition to a single-family residence, located at 3648 Happy Valley Road. APN 244-180-049.

104. V20-07 BRYAN GORDON (APPLICANT), DANIEL & JULIE CHINN (OWNERS), R-10 ZONING: Request for a retro-active variance from Section 6-728 of the Lafayette Municipal Code to reduce the required 10-ft. side yard setback to 4.5-ft. to construct a deck addition and pergola approximately 25-ft. in height to an existing residence within the Hillside Overlay District, located at 17 Wendy Lane APN 251-182-039.

105. HDP58-04 STEPHEN & BARBARA DOUGLASS (APPLICANTS & OWNERS), R-20 ZONING: Request for a retroactive Hillside Development Permit pursuant to Section 6-2015 of the Lafayette Municipal Code (LMC) to permit an existing single-story addition to a detached accessory building for a single-family residence within the Hillside Overlay District. V21-04 STEPHEN & BARBARA DOUGLASS (APPLICANTS & OWNERS), R-20 ZONING: Request for a retroactive variance pursuant to Section 6-788 of the Lafayette Municipal Code (LMC) to reduce the side yard from the required 3-ft. to 2.75-ft. to permit an existing single-story addition to a detached accessory building for a single-family residence within the Hillside Overlay District, located at 3455 Goyak Dr. APN 231-050-010.

106. V22-04 MCLAUGHLIN RENOVATIONS & CONSTRUCTION, INC., ROBERT MCLAUGHLIN (APPLICANT), PATRICK & LISA MCCAULEY (OWNERS), R-20 ZONING: Request for a variance from Section 6-788 of the Lafayette Municipal Code (LMC) to reduce the side yard setback from the required 15-ft. to 10-ft. and to reduce the aggregate side yards from the required 35-ft. to 30-ft. to construct an attached 12-ft. high, single-story addition to a single-story residence located at 3553 Via Los Colorados. APN 236-070-011.

107. V22-05 ANN MARIE CELONA CUSTOM HOMES & WORKPLACES (APPLICANT), JASON & JENNIFER LURIE (OWNERS), R-10 ZONING: Request for variances pursuant to section 6-733 of the Lafayette Municipal Code to (1) reduce the side yard setback from the required 10'-0" to 4'-9" and (2) to reduce the aggregate side yard width from 20'0" to 14'9" to construct a 188 sq. ft. one-story addition to an existing one-story single-family residence located at 1231 Sunset Loop. APN 185-341-003.

108. V23-05 JAMES MANO & LISA SCOTT (APPLICANTS & OWNERS), R-6 ZONING: Request for a Variance from (1) Section 6-710 of the Lafayette Municipal Code to reduce the front yard setback from the required 20'0" to 15'0" and (2) Section 6-709 to reduce the aggregate side yard setback from 15'0" to 14'1" to enclose an existing one-story attached carport, located at 1019 Walnut Drive. APN 233-073-004.